

No. 13887

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United States  
Court of Appeals  
for the Ninth Circuit

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UNITED STATES OF AMERICA,  
Appellant,  
vs.  
JEWEL HAWKINS, Appellee.

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Transcript of Record

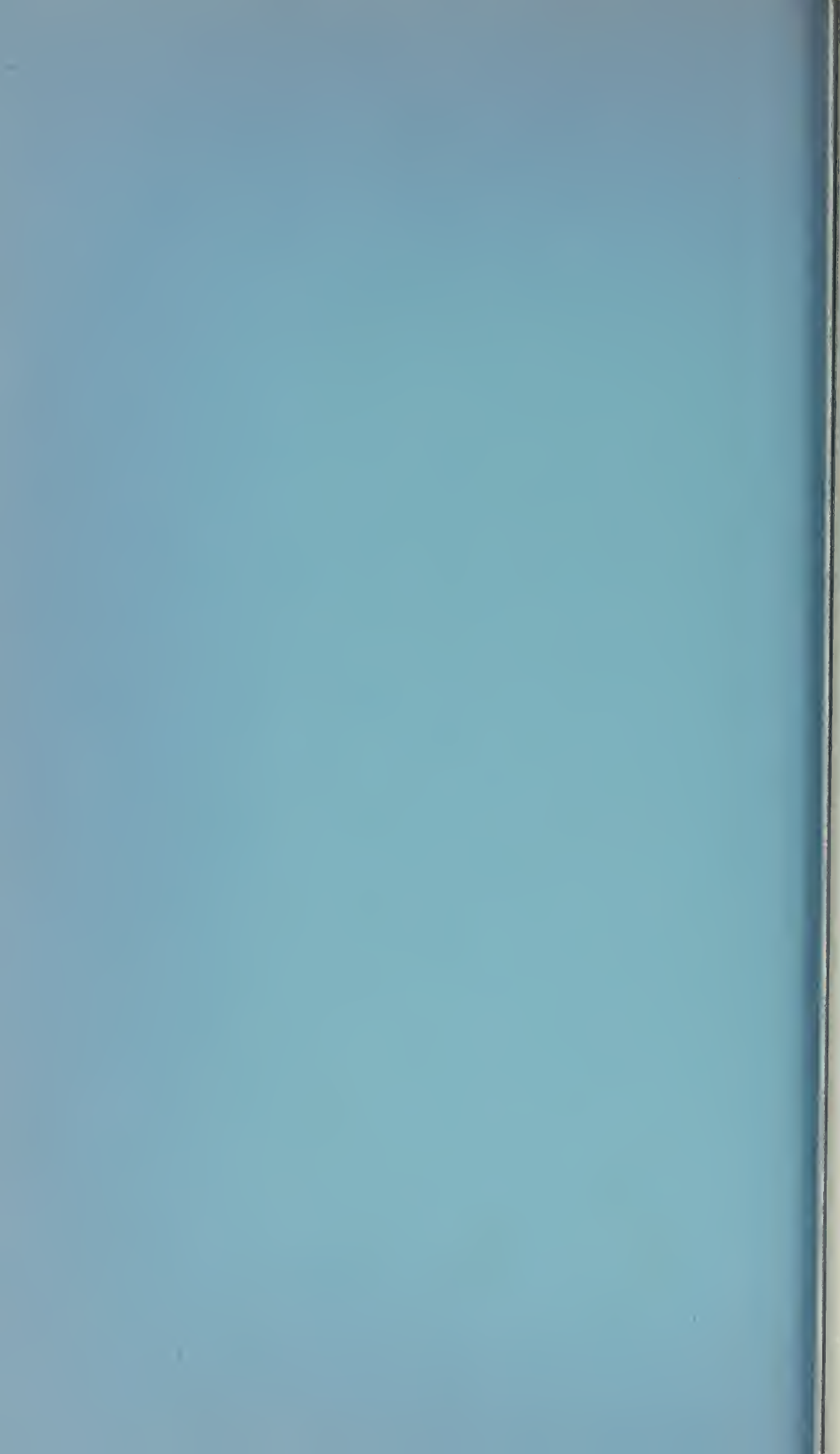
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Appeal from the District Court for the Territory of  
Alaska, Third Division

FILED

SEP 10 1953

PAUL P. O'BRIEN  
CLERK



No. 13887

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United States  
Court of Appeals  
for the Ninth Circuit

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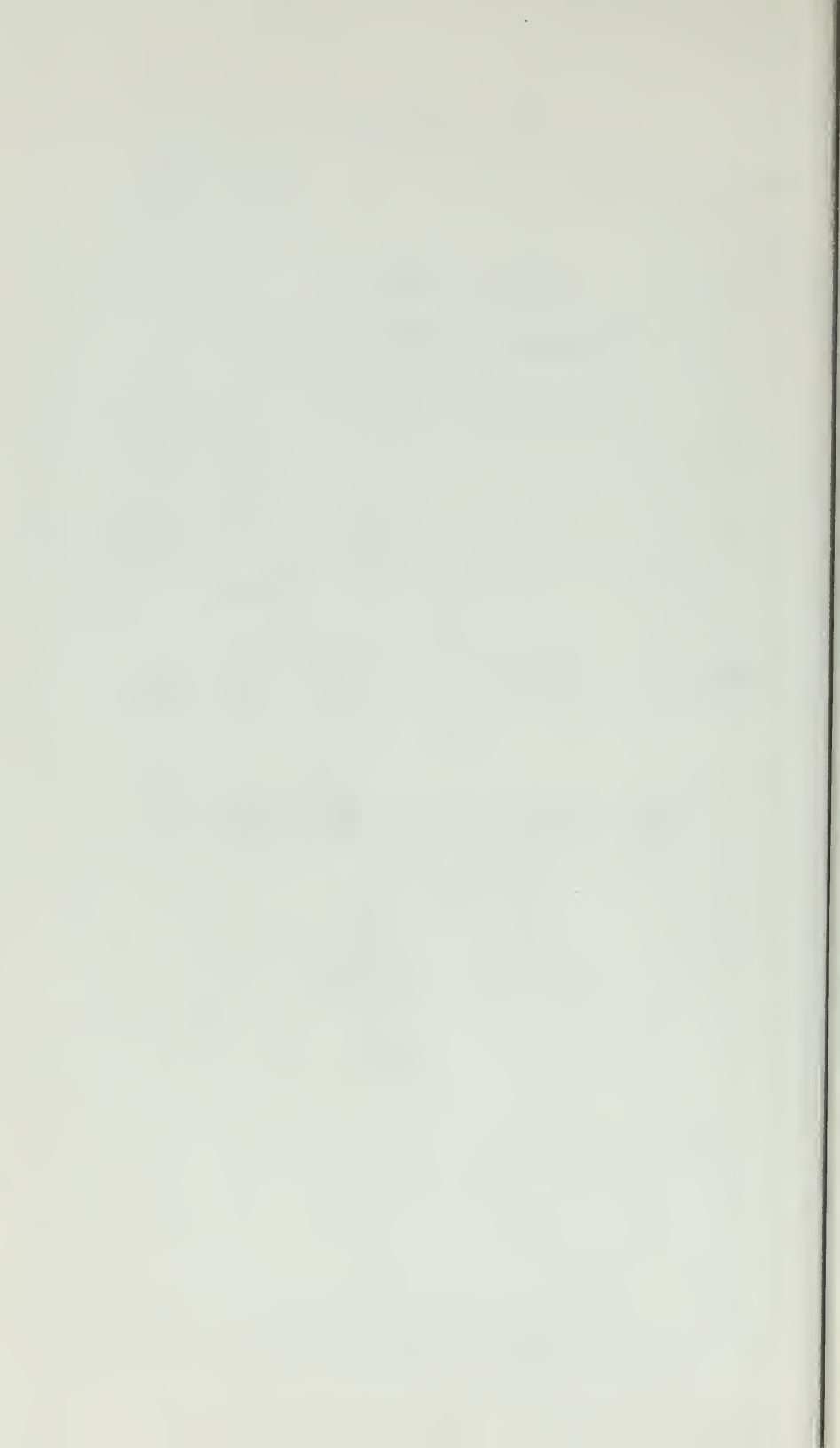
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Appeal from the District Court for the Territory of  
Alaska, Third Division



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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Plaintiff:

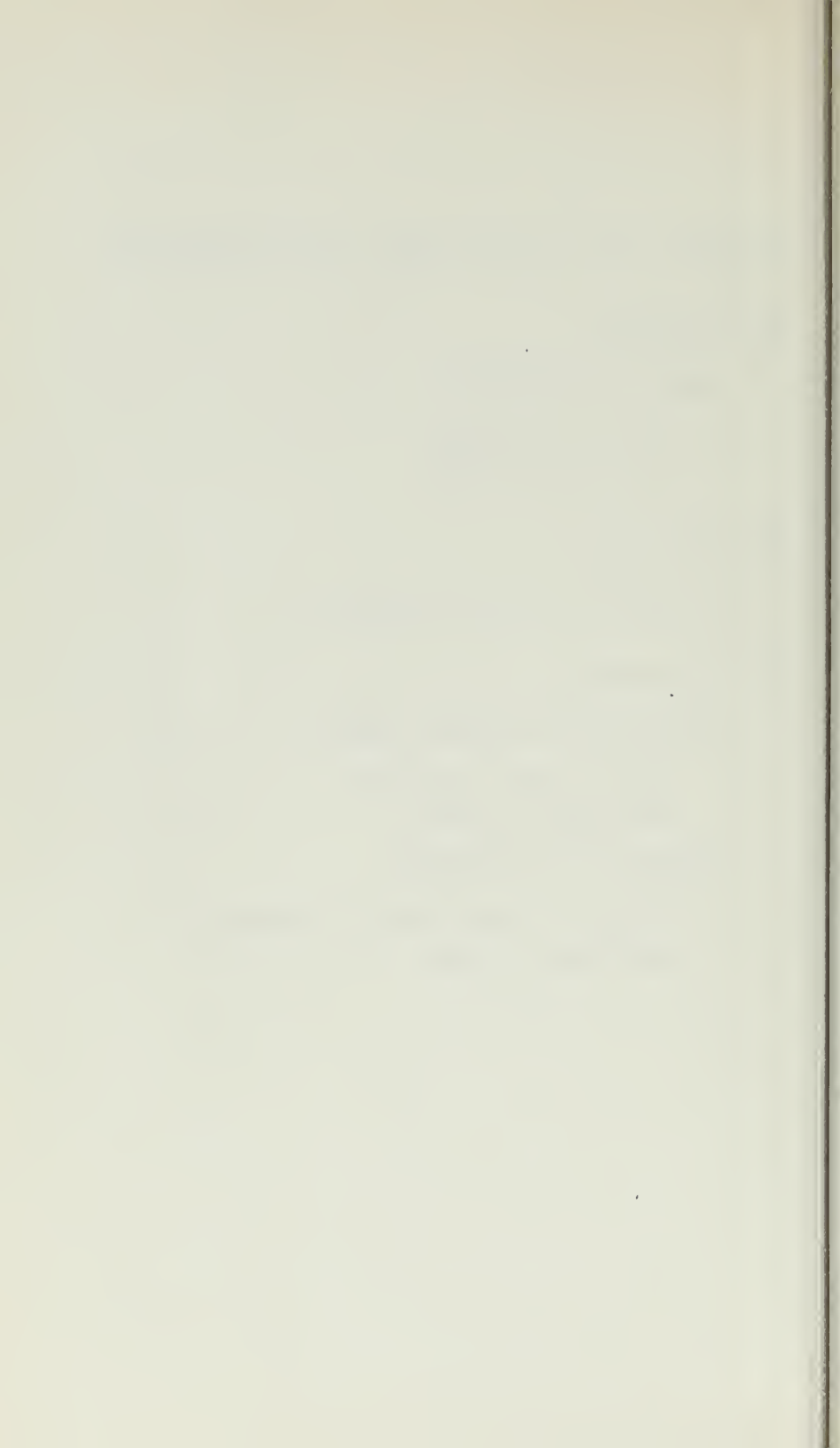
BELL & SANDERS,  
Central Building,  
Anchorage, Alaska.

For Defendant:

No appearance by Defendant.

For Intervenor:

SEABORN J. BUCKALEW,  
United States Attorney,  
Anchorage, Alaska,  
ARTHUR D. TALBOT,  
Assistant United States Attorney,  
Anchorage, Alaska.



In the District Court for the Territory of Alaska,  
Third Division

No. A-6011

JEWEL HAWKINS, Plaintiff,

vs.

LAWRENCE SAVAGE, doing business as Lee  
Savage Painting Company,  
Defendant.

### COMPLAINT

Comes now the above-named plaintiff, and for her causes of action against the above-named defendant, alleges and states, as follows:

#### First Cause of Action

Plaintiff for her first cause of action, alleges and states:

#### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about August 18, 1949, the defendant issued his check on the Bank of Alaska of Anchorage, Alaska, to Bob Campbell for work and labor performed, in the sum of thirty dollars (\$30.00), being then and there indebted to the said Bob Campbell for said sum, and thereafter, Bob Campbell endorsed his name on the back of said check as payee, and the plaintiff cashed said check, a copy of which is hereto attached, Marked Exhibit "A", and made a part hereof by reference as fully as if set out in full herein, thereby pay-

ing to Bob Campbell thirty dollars (\$30.00), believing said check to be good, and that the said defendant did have in the Bank of Alaska, adequate funds to pay said check.

## II.

Plaintiff further alleges that she endorsed said check, and obtained payment therefor, from the Northern Commercial Company, an Alaskan corporation, and the Northern Commercial Company in due time presented said check to the Bank of Alaska for payment, and the payment thereof was refused with the notation marked thereon, "account closed", and this plaintiff was then required to pay to the Northern Commercial Company, the said thirty dollars (\$30.00) and take up said check, and she is now the owner and holder thereof, and that said check has not been paid, and that by reason thereof, the defendant is justly indebted to this plaintiff in the sum of thirty dollars (\$30.00), together with interest thereon at the rate of six per cent (6%) per annum from August 18, 1949, on this, her first cause of action.

## Second Cause of Action

Plaintiff for her second cause of action, alleges and states:

### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Dominick Farino for work and labor per-

formed, in the sum of twelve dollars and forty seven cents (\$12.47), and did on said date, utter, issue, execute, and sign and deliver his check to the said Dominick Farino for the sum of \$12.47, a copy of said check with all endorsements thereon, is hereto attached, marked Exhibit "B", and made a part hereof by reference as fully as if set out in full herein. That thereafter this plaintiff believing said check to be good, paid the said Dominick Farino said sum upon his endorsing on the back of said check, his name. That thereafter this plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same, and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$12.47, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the said sum of \$12.47, and that she is now the owner and holder of said check, in due course, and is entitled to recover of and from the defendant, the sum of \$12.47, which is now due and owing to the plaintiff, on this, her second cause of action, together with interest thereon at the rate of six per cent (6%) per annum from the 20th day of August, 1949, until paid.

## Third Cause of Action

Plaintiff for her third cause of action, alleges and states:

## I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on the 26th day of August, 1949, uttered, issued, signed, and delivered his check to this plaintiff, Jewel Hawkins, in the sum of two thousand dollars (\$2000.00), and the said Jewel Hawkins, the plaintiff herein, did on said date, cash said check to the full extent of two thousand dollars. That the plaintiff, believing said check to be good, accepted the same, and endorsed it to Ted McHenry, who paid her said sum of money, and the said Ted McHenry, in due course, cashed said check at the store of the Northern Commercial Company, and did obtain thereon, cash to the extent of \$2000.00; that in due course and within a reasonable time thereafter, the Northern Commercial Company endorsed said check, and presented the same for payment to the Bank of Alaska, the bank said check was drawn on, and the Bank of Alaska refused payment thereof, and marked said check "NSF", meaning not sufficient funds, and returned said check to the Northern Commercial Company. Thereafter, the Northern Commercial Company demanded this plaintiff to take said check up, and pay them the sum of \$2000.00, the amount of said check, and this plaintiff did, and she is now the owner and holder thereof, in due course, and is entitled to recover of and from the defendant, the sum of \$2000.00, the amount due on said check, plus

six per cent (6%) per annum from the 26th day of August, 1949, until paid, on this, her third cause of action.

A copy of said check for \$2000.00, together with all endorsements thereon, is hereto attached, marked Exhibit "C", and made a part hereof, by reference as fully as if set out herein in full.

#### Fourth Cause of Action

Plaintiff for her fourth cause of action, alleges and states:

##### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Dominick Farino for work and labor performed, in the sum of thirty eight dollars and forty nine cents (\$38.49) and did on said date, utter, issue, execute, sign, and deliver his check to the said Dominick Farino for the sum of \$38.49, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "D", and made a part hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Dominick Farino said sum upon his endorsing on the back of said check, his name. That thereafter, this plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check

to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same, and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$38.49, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$38.49, and that she is now the owner and holder of said check, in due course, and is entitled to recover of and from the defendant, the sum of \$38.49, together with interest thereon at the rate of six per cent (6%) per annum from the 20th day of August, 1949, which is now due and owing to this plaintiff, on this, her fourth cause of action.

#### Fifth Cause of Action

Plaintiff for her fifth cause of action, alleges and states:

#### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Charles Wallen for work and labor performed, in the sum of forty three dollars and forty four cents (\$43.44), and did on said date, utter, issue, execute, sign, and deliver his check to the said Charles Wallen for the sum of \$43.44, a copy of said check is hereto attached, with all endorsements



thereon, marked Exhibit "E", and made a part hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Charles Wallen said sum upon his endorsing on the back of said check, his name. That thereafter the plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$43.44, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$43.44, and that she is now the owner and holder of said check, in due course, and is entitled to recover of and from the defendant, the sum of \$43.44, together with interest thereon at the rate of six per cent per annum from the 20th day of August, 1949, which is now due and owing this plaintiff, on this, her fifth cause of action.

#### Sixth Cause of Action

Plaintiff for her sixth cause of action, alleges and states:

## I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Charles Wallen for work and labor performed, in the sum of one hundred and nine dollars and ninety five cents (\$109.95) and did on said date, utter, issue, execute, sign, and deliver his check to the said Charles Wallen for the sum of \$109.95, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "F", and made a part hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Charles Wallen said sum upon his endorsing on the back of said check, his name. That thereafter, the plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$109.95, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$109.95, and that she is now the owner and

holder of said check, in due course, and is entitled to recover of and from the defendant, the sum of \$109.95, together with interest thereon at the rate of six per cent per annum from the 20th day of August, 1949, which is now due and owing this plaintiff on this, her sixth cause of action.

### Seventh Cause of Action

Plaintiff for her seventh cause of action, alleges and states:

#### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Roger Anderson for work and labor performed, in the sum of forty one dollars and eighty four cents (\$41.84), and did on said date, utter, issue, execute, and sign and deliver his check to the said Roger Anderson for the sum of \$41.84, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "G", and made a part hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Roger Anderson said sum upon his endorsing on the back of said check, his name. That thereafter, this plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank

on which the check was drawn for payment, and the bank refused the same and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$41.84, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$41.84, and that she is now the owner and holder of said check, in due course, and is entitled to recover of and from the defendant, the sum of \$41.84, together with interest thereon at the rate of six per cent (6%) per annum from the 20th day of August, 1949, which is now due and owing to this plaintiff, on this, her seventh cause of action.

#### Eighth Cause of Action

Plaintiff for her eighth cause of action, alleges and states:

##### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Roger Anderson for work and labor performed, in the sum of twelve dollars and forty seven cents (\$12.47), and did on said date, utter, issue, execute, sign, and deliver his check to the said Roger Anderson for the sum of \$12.47, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "H", and made a part

hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Roger Anderson said sum upon his endorsing on the back of said check, his name. That thereafter, this plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same, and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of the plaintiff that she repay them the sum of \$12.47, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$12.47, and that she is now the owner and holder of said check in due course, and is entitled to recover of and from the defendant, the sum of \$12.47, together with interest thereon at the rate of six per cent per annum from the 20th day of August, 1949, which is now due and owing to this plaintiff, on this, her eighth cause of action.

#### Ninth Cause of Action

Plaintiff for her ninth cause of action, alleges and states:

##### I.

That the defendant, Lawrence Savage, is an in-

dividual doing business as Lee Savage Painting Company of Alaska; and on or about the 20th day of August, 1949, the said defendant was justly indebted to Frank Orokos for work and labor performed, in the sum of twelve dollars and forty seven cents (\$12.47), and did on said date, utter, issue, execute, and sign and deliver his check to the said Frank Orokos for the sum of \$12.47, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "I", and made a part hereof by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Frank Orokos said sum upon his endorsing on the back of said check, his name. That thereafter, this plaintiff cashed said check at the store of the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same, and entered its notation thereon, "NSF", meaning, not sufficient funds, and immediately thereafter, the Northern Commercial Company demanded of this plaintiff that she repay them the sum of \$12.47, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$12.47, and that she is now the owner and holder of said check in due course, and is entitled to recover of and from the defendant, the sum of \$12.47, together

with interest thereon at the rate of six per cent per annum from the 20th day of August, 1949, which is now due and owing to this plaintiff, on this, her ninth cause of action.

### Tenth Cause of Action

Plaintiff for her tenth cause of action, alleges and states:

#### I.

That the defendant, Lawrence Savage, is an individual doing business as Lee Savage Painting Company of Alaska, and on or about the 20th day of August, 1949, the said defendant was justly indebted to Frank Orokos for work and labor performed, in the sum of forty dollars and seventy four cents (\$40.74), and did on said date, utter, issue, execute, and sign and deliver his check to the said Frank Orokos for the sum of \$40.74, a copy of said check with all endorsements thereon is hereto attached, marked Exhibit "J", and made a part hereof, by reference as fully as if set out in full herein. That thereafter, this plaintiff, believing said check to be good, paid the said Frank Orokos said sum upon his endorsing on the back of said check, his name. That thereafter, this plaintiff cashed said check at the Northern Commercial Company, and the said Northern Commercial Company in due course of business and within a reasonable time thereafter, presented said check to the Bank of Alaska for payment, being the bank on which the check was drawn for payment, and the bank refused the same, and entered its notation thereon,

“NSF”, meaning, not sufficient funds; and immediately thereafter, the Northern Commercial Company demanded of this plaintiff that she repay them the sum of \$40.74, the amount of said check, and take the same back as her property, and in compliance with said demand, she did pay the said Northern Commercial Company the sum of \$40.74, and that she is now the owner and holder of said check in due course, and is entitled to recover of and from the defendant, the sum of \$40.74, together with interest thereon, at the rate of six per cent per annum from the 20th day of August, 1949, which is now due and owing to this plaintiff, on this, her tenth cause of action.

Wherefore, plaintiff prays that she may recover on her first cause of action, the sum of \$30.00, together with interest thereon at the rate of six per cent per annum, from the 18th day of August, 1949, for work and labor performed.

That she may recover on her second cause of action, the sum of \$12.47, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her third cause of action, the sum of \$2000.00, together with interest thereon at the rate of 6% per annum from the 26th day of August, 1949, until fully paid.

That she may recover on her fourth cause of action, the sum of \$38.49, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.



That she may recover on her fifth cause of action, the sum of \$43.44, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her sixth cause of action, the sum of \$109.95, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her seventh cause of action, the sum of \$41.84, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her eighth cause of action, the sum of \$12.47, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her ninth cause of action, the sum of \$12.47, together with interest thereon at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover on her tenth cause of action, the sum of \$40.74, together with interest thereon, at the rate of 6% per annum from the 20th day of August, 1949, for work and labor performed.

That she may recover all costs of this action, including a reasonable attorney's fee for plaintiff's attorney.

/s/ BAILEY E. BELL,  
Attorney for Plaintiff.

## EXHIBIT "A"

Bank of Alaska 59-20

Anchorage, Alaska, Aug. 18, 1949. No.....

Pay to the Order of Bob Campbell.....\$30.00

Thirty no/100.....Dollars.

Counter Check

"Acc't closed"

/s/ Lawrence Savage

Endorsements on the back of the check:

1. Bob Campbell.

2. Jewel Hawkins.

3. Pay to the Bank of Alaska Anchorage, Alaska  
or order Northern Commercial Company. 58

Pay to the Order of Northern Commercial Co.

## EXHIBIT "B"

Lee Savage Painting Co. of Alaska

P.O. Box 1686, Anchorage, Alaska

To Bank of Alaska, Anchorage, Alaska 59-5

No. 2137

Aug. 20, 1949

Pay Twelve 47/100 Dollars.....\$12.47

To the Order of: Dominick Farino

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Dominick Farino.

2. Jewel Hawkins.

3. Pay to the order of Northern Commercial Co.

EXHIBIT "C"

Lee Savage Painting Co. of Alaska  
P. O. Box 1686, Anchorage, Alaska

No. 2147

Aug. 26, 1949

To Bank of Alaska, Anchorage, Alaska 59-5

Pay Two Thousand Dollars.....\$2000.00

To the order of Jewell Hawkins.

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Charge Material

Endorsements on the back of the check:

1. Jewel Hawkins.
2. Ted McHenry.
3. Pay to the order of Northern Commercial Co.

EXHIBIT "D"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2141

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay Thirty Eight 49/100 Dollars.....\$38.49

To the order of Dominick Farino

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Dominick Farino.
2. Jewel Hawkins.
3. Pay to the order of Northern Commercial Co.

## EXHIBIT "E"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2138

August 20, 1949

To Bank of Alaska, Anchorage, Alaska 59-5.

Pay Forty Three 44/100 Dollars.....\$43.44

To the order of Charles Wallen

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

## EXHIBIT "F"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2134

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay One Hundred and Nine 95/100 Dollars \$109.95

To the Order of Charles Wallen

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Charles Wallen.
2. Jewel Hawkins.
3. Pay to the order of Northern Commercial Co.

EXHIBIT "G"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2139

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay Forty One 84/100 Dollars.....\$41.84

To the order of Roger Anderson

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Roger Anderson.
2. Jewel Hawkins.
3. Pay to the order of Northern Commercial Co.

EXHIBIT "H"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2135

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay Twelve 47/100 Dollars.....\$12.47

To the order of Roger Anderson

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Roger Anderson.
2. Jewel Hawkins.
3. Pay to the order of the Northern Commercial Co.

## EXHIBIT "I"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2136

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay Twelve 47/100 Dollars.....\$12.47

To the order of Frank Orokos

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Frank Orokos.
2. Jewel Hawkins.
3. Pay to the order of Northern Commercial Co.

## EXHIBIT "J"

Lee Savage Painting Co. of Alaska  
P.O. Box 1686, Anchorage, Alaska

No. 2140

Aug. 20, 1949

To Bank of Alaska, Anchorage, Alaska, 59-5.

Pay Forty 74/100 Dollars.....\$40.74

To the order of Frank Orokos

Lee Savage Painting Co.

By /s/ Lawrence Savage

(N.S.F.)

Endorsements on the back of the check:

1. Frank Orokos.
2. Jewel Hawkins.
3. Pay to the order of Northern Commercial Co.

[Endorsed]: Filed Feb. 27, 1950.

[Title of District Court and Cause.]

AFFIDAVIT FOR ATTACHMENT

United States of America,  
Territory of Alaska, Third Division—ss.

I, Shrader Hawkins, being first duly sworn, upon my oath say: That I am the attorney in fact for the Plaintiff named in the above-entitled action; that the Defendant in said action is indebted to Plaintiff in the sum of (\$2341.87) two thousand three hundred forty one dollars and eighty-seven cents, over and above all legal setoffs and counterclaims upon unpaid checks contract for the direct payment of money, and that the payment of the same has not been secured by mortgage, lien or pledge upon real or personal property. That the sum of two thousand three hundred forty-one dollars and eighty-seven cents (\$2341.87) for which the attachment is asked herein is an actual, bona fide, existing debt, due and owing from the Defendant to the Plaintiff, and the attachment herein is not sought nor the action prosecuted to hinder, delay or defraud any creditor of the Defendant.

/s/ SHRADER HAWKINS

Subscribed and sworn to before me, this 27th day of February, 1950.

[Seal]        /s/ BAILEY E. BELL, Jr.,  
Notary Public, Territory  
of Alaska.

[Endorsed]: Filed Feb. 27, 1950.

[Title of District Court and Cause.]

### SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Bailey E. Bell, plaintiff's attorney, whose address is 213 Central Bldg., Anchorage, Alaska, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated February 28, 1950.

[Seal]

M. E. S. BRUNELLE,

Clerk of the District Court.

/s/ By CHARLES M. KNOTT,

Deputy Clerk.

U.S. Marshal's Return attached.

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[Title of District Court and Cause.]

### ATTACHMENT WRIT

The President of the United States of America:

To the Marshal of the Territory of Alaska, Division No. 3, or to his Deputy, Greeting:

Whereas, Jewel Hawkins, by her attorney in fact, Shrader Hawkins, has complained that Lawrence Savage, doing business as Lee Savage Painting Company, is justly indebted to her in the amount of two thousand three hundred forty-one dollars and eighty-seven cents (\$2341.87) and the neces-



sary affidavit and undertaking herein having been filed as required by law.

We Therefore Command You, That you attach and safely keep all the property of the said defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the Plaintiff's demand, as above stated, to be found in your Division of said Territory, and as shall be of value sufficient to satisfy the said debt and the costs and disbursements of said Plaintiff herein. And of this writ make due service and return.

Witness, The Honorable Anthony J. Dimond, Judge of said Court and the seal thereof affixed at Anchorage, in said Territory, this 28th day of February, 1950.

[Seal]

M. E. S. BRUNELLE,  
Clerk.

/s/ By CHARLES M. KNOTT,  
Deputy Clerk.

U.S. Marshal's Return attached.

#### NOTICE OF ATTACHMENT

To: Warren Cuddy and Wendell Kay doing business as Cuddy & Kay; Bank of Alaska, by serving E. A. Rasmuson; J. B. Warrack, by serving Leonard Thomas; Paddock's Paint Shop, by serving Harold Paddock; and R. W. Jackson.

You will please take notice, that all moneys, goods, credits, effects, debts due or owing, and all other personal property in your possession, or under your control, belonging to the defendant named

in the Writ, of which the annexed is a true copy, are attached by virtue of said Writ, and you are hereby notified not to pay over or transfer the same to anyone but myself. Please furnish a statement of all cash, credits, deposits, or other things of value that you have under your control, or in your hands.

Dated this 27th day of February, 1950.

PAUL HERRING,  
U.S. Marshal,  
/s/ By D. A. CARLQUIST,  
Deputy.

Money due to defendant \$2341.87.

Other property: None.

Declared by J. B. Warrack Co.

[Endorsed]: Filed April 19, 1950.

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[Title of District Court and Cause.]

MOTION FOR LEAVE TO INTERVENE

Comes now the United States of America by Ralph E. Moody, Assistant United States Attorney, and moves the court for leave to intervene in the above-entitled action on the grounds and for the reason that the United States of America has priority over the assets of the defendant, Lawrence Savage for payment of taxes by virtue of Sections 191 and 192, Title 31, U.S.C.A., and recorded liens as more fully appears in the affidavit attached hereto.

/s/ RALPH E. MOODY,  
Assistant United States Attorney

## AFFIDAVIT

United States of America,  
Territory of Alaska—ss.

Ralph E. Moody, being first duly sworn upon his oath deposes and says:

That I am the Assistant United States Attorney, Third Division, Territory of Alaska, and the attorney for the United States of America.

That I am reliably informed by A. Verle Collar, Deputy Collector of Bureau of Internal Revenue, Anchorage, Alaska, and based upon such information believe the fact to be that Lawrence Savage owes the United States of America the following described taxes:

1. Withholding Tax For the Taxable Year	
Ending Sept. 30, 1949.....	\$2837.09
Employment Tax F. I. C. A. For The	
Taxable Year Ending Sept. 30, 1949....	483.75
	<hr/>
Total Tax.....	\$3320.84

of the above total, the said Lawrence Savage has paid Six Hundred Eight Dollars and Ninety-four Cents (\$608.94), leaving a balance of tax owed the United States a sum of Two Thousand Seven Hundred Eleven Dollars and Ninety Cents (\$2711.90) plus interest at the rate of six (6) per cent per annum from date due until paid, plus a

filing fee of Three Dollars and Fifty Cents (\$3.50) incurred by the United States for filing a lien against the property of the said Lawrence Savage.

2. Withholding Tax For The Taxable Year

Ending June 16, 1950.....	\$ 505.90
Employment Tax F. I. C. A. For The Taxable Year Ending June 16, 1950..	126.57

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Total Tax Owed The United States....\$ 632.47

plus interest at the rate of six (6) percent per annum from date due until paid, plus a filing fee of Three Dollars and Fifty Cents (\$3.50) incurred by the United States for filing the lien against the assets of the said Lawrence Savage.

That the assets of the said Lawrence Savage have been attached by process of law by virtue of an attachment filed in this cause on the 27th day of February, 1950, and that by virtue of said attachment, the United States of America is entitled to priority of payment of the above stated taxes by virtue of Sections 191 and 192, Title 31, U.S.C.A.

That the United States of America has filed tax liens for the amounts above stated in the Anchorage Recording Precinct, Anchorage, Alaska, as more fully appears in the copies of Notice of Tax Lien Under Internal Revenue Laws which are attached hereto as Exhibits "A", and "B" and by reference made a part hereto as if fully set out herein. Attached hereto is a proposed Complaint of Intervention.

Wherefore, the United States of America asks

leave to intervene herein to protect its rights and file this Complaint of Intervention.

/s/ RALPH E. MOODY,  
Assistant United States Attorney.

Subscribed and sworn to before me this 9th day of August, 1950.

/s/ CHARLES M. KNOTT,  
Deputy Clerk.

Acknowledgment of Service attached.

EXHIBIT A

Form 668—Rev. Nov. 1943 (Copy)  
Treasury Department, Internal Revenue Service

NOTICE OF TAX LIEN UNDER INTERNAL  
REVENUE LAWS

No. 17153 June 12, 1950

United States Internal Revenue,  
District of Washington

Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is (or are) a lien (or

liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer: Lawrence J. Savage DBA Lee Savage Painting Company.

Residence or place of business: Box 2468, Anchorage, Alaska.

Nature of Tax	Year or Taxable Period Ended	Date Assessment List Received	Amount of Assessment
Withholding	9-30-49	12-27-49	2837.09
Employment: FICA	9-30-49	12-27-49	483.75
		Filing Fee	3.50
		Total	<u>3324.34</u>

CLARK SQUIRE, Collector

/s/ By FRANK J. HEALY,  
Deputy Collector in Charge

Certificate of Officer Authorized by Law to  
Take Acknowledgments

[Printer's Note: Not filled out.]

To: U. S. Commissioner, Anchorage, Alaska.

Filed this 13th day of June, 1950, at 11:30 a.m.  
Signed Rose Walsh, Clerk.

## EXHIBIT B

Form 668—Rev. Nov. 1943 (Copy)  
 Treasury Department, Internal Revenue Service

NOTICE OF TAX LIEN UNDER INTERNAL  
 REVENUE LAWS

No. 17255 June 23, 1950

United States Internal Revenue,  
 District of Washington.

Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer: Lawrence J. Savage DBA  
 Savage Painting Co.

Nature of Tax	Year or Taxable Period Ended	Date Assessment List Received	Amt. of Assess- ment
Withholding	4-1-50—6-16-50	Tel Recd 6-22-50	505.90
Employment-FICA	4-1-50—6-16-50	Tel Recd 6-22-50	126.57
		Filing Fee	3.50
		Total	635.97

CLARK SQUIRE, Collector  
/s/ By RALPH A. NOERENBERG,  
Deputy Collector in Charge

Certificate of Officer Authorized by Law to  
Take Acknowledgments

[Printer's Note: Not filled out.]

To: U. S. Commissioner, Anchorage, Alaska.

Filed this 28th day of June, 1950, at 3 p.m.  
Signed Rose Walsh, Clerk.

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[Title of District Court and Cause.]

#### HEARING ON MOTION FOR LEAVE TO INTERVENE

Now at this time hearing on motion for leave to intervene in cause No. A-6011 entitled Jewel Hawkins, Plaintiff, versus Lawrence Savage d/b/a Lee Savage Painting Co., Defendant, came on regularly before the Court. The reporting waived and Ralph E. Moody, Assistant United States Attorney appeared for and in behalf of the Government. Bailey E. Bell appeared for and in behalf of the plaintiff, the Defendant not being present nor represented the following proceedings were had to-wit:

Argument to the Court was had by Ralph E. Moody, for and in behalf of the Government.

Argument to the Court was had by Bailey E. Bell, for and in behalf of the Plaintiff.



Argument to the Court was had by Ralph E. Moody, for and in behalf of the Government.

Whereupon the Court having heard the arguments of the respective counsels and being fully and duly advised in the premises, reserved decision.

Entered in Journal Sept. 15, 1950.

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[Title of District Court and Cause.]

M.O. GRANTING MOTION FOR LEAVE  
TO INTERVENE

Now at this time arguments on motion for leave to intervene having been had heretofore and on the 15th day of September, 1950 in cause No. A-6011, entitled Jewel Hawkins, Plaintiff, versus Lawrence Savage d/b/a Lee Savage Painting Co., Defendant, and the court having reserved its decision,

Whereupon the Court now grants leave to intervene and complaint in intervention filed and parties given 15 days to plead to complaint in intervention.

Entered in Journal Sept. 21 1950.

[Title of District Court and Cause.]

## COMPLAINT OF INTERVENTION

Comes now the United States of America, Intervenor herein, after leave of the court first had and obtained, and for its first cause of action against the above-named plaintiff and defendant, alleges as follows:

### I.

That on the 27th day of February, 1950, the above-entitled action was commenced by Jewel Hawkins, an individual, against the defendant herein and there issued from this court a Writ of Attachment which thereafter was returned on the 27th day of February, 1950, showing that the assets of defendant, Lawrence Savage, in the amount of Two Thousand Three Hundred Forty One Dollars and Eighty-seven Cents (\$2341.87) in the hands of J. B. Warrack & Company had been attached.

### II.

That at all times hereinafter mentioned the Intervenor, the United States of America, was, and now is, a corporation sovereign and body politic.

### III.

That the United States of America at the time of the commencement of said suit by Jewel Hawkins against the defendant, Lawrence Savage, had a lien of record against the defendant for withholding tax for the period ending September 30, 1949, in the amount of Two Thousand Eight Hun-

dred Thirty Seven Dollars and Nine Cents (\$2837.09), and employment taxes, F.I.C.A. for the period ending September 30, 1949, in the amount of Four Hundred Eighty Three Dollars and Seventy-five Cents (\$483.75). The total amount of tax due of Three Thousand Three Hundred Twenty Dollars and Eighty-four Cents (\$3320.84), of which sum the amount of Six Hundred Eight Dollars and Ninety-four Cents (\$608.94), has subsequently been paid, leaving a total amount due the United States of America for taxes as above set out, of Two Thousand Seven Hundred Eleven Dollars and Ninety Cents, plus interest at the rate of six (6) percent per annum from date due until paid, plus filing fee in the amount of Three Dollars and Fifty Cents (\$3.50) incurred by the United States of America for filing the tax lien in the Anchorage Recording Precinct in Anchorage, Alaska. Copy of said lien of record and assessment for taxes is attached hereto as Exhibit "A" and by reference made a part hereof as if fully set out herein. Said tax and interest is due and payable to the United States prior to the rights of the Plaintiff by virtue of Sections 191 and 192, Title 31, U.S.C.A.

The United States of America for its second cause of action against the above-named plaintiff and defendant alleges as follows:

### I.

That the Intervenor, the United States of America, by reference incorporates paragraphs one (1) and two (2) of the First Cause of Action hereto-

fore stated as part of its Second Cause of Action as if fully set out herein.

## II.

That the Intervenor, the United States of America, subsequent to commencement of said suit by Jewel Hawkins against the defendant, Lawrence Savage, acquired a lien against all the assets of the defendant, Lawrence Savage, for unpaid withholding tax for the taxable period ending June 16, 1950, in the amount of Five Hundred Five Dollars and Ninety Cents (\$505.90), and employment tax F.I.C.A., for the taxable period ending June 16, 1950, in the amount of One Hundred Twenty Six Dollars and Fifty-seven Cents (\$126.57) by filing a lien of record in the Anchorage Recording Precinct, Anchorage, Alaska, for said sum of Six Hundred Thirty Two Dollars and Forty-seven Cents (\$632.47) which amount is still owed the United States of America, plus a filing fee in the amount of Three Dollars and Fifty Cents (\$3.50), incurred by the United States for filing said lien, plus interest on the amount of Six Hundred Thirty Two Dollars and Forty-seven Cents (\$632.47), at the rate of Six (6) Percent per annum from date due until paid; said tax and interest is due and payable to the United States prior to the rights of the plaintiff by virtue of Sections 191 and 192, Title 31, U.S.C.A. Copy of said assessment covering said tax and lien of record of the Intervenor is attached hereto as Exhibit "B" and made a part hereof as if fully set out herein.

Wherefore, the United States of America prays:

Judgment on its First Cause of Action in the amount of Two Thousand Seven Hundred Eleven Dollars and Ninety Cents (\$2711.90), plus interest at the rate of six (6) percent per annum from date due until paid plus Three Dollars and Fifty Cents (\$3.50) filing fee.

Judgment on its Second Cause of Action in the amount of Six Hundred Thirty Two Dollars and Forty-seven Cents plus six (6) percent interest per annum from date due until paid plus Three Dollars and Fifty Cents (\$3.50) filing fee.

That the United States of America be granted its costs incurred in this action.

That the United States of America be granted such other relief as the Court deems just and proper.

/s/ RALPH E. MOODY,  
Assistant United States Attorney.

[Printer's Note: The attached Notice of Tax Lien Under Internal Revenue Law are duplicates of Exhibits A and B set out in full at pages 29-32 of this printed Record.]

Duly Verified.

Acknowledgement of Service attached.

[Endorsed]: Filed Sept. 21, 1950.

[Title of District Court and Cause.]

ORDER AUTHORIZING AND DIRECTING  
SERVICE BY PUBLICATION

Upon reading the affidavit of the plaintiff duly signed and filed in this action and upon an examination of the files and records in said case; it satisfactorily appears that the defendant is not in the Territory of Alaska, and cannot be served with summons in said Territory, and that this Court has jurisdiction of personal property in the Territory of Alaska to-wit: \$2,341.87, said funds being in the hands of J. B. Warrack, subject to being paid into Court, and being paid out in compliance with orders of this Court; that a good cause of action in favor of the plaintiff and against the defendant is stated in the complaint and supplemental complaint filed herein. It further appearing that due diligence has been made to ascertain the whereabouts of the defendant and that the best information plaintiff is able to acquire, is that he now resides in Oakland, California.

That the plaintiff has made proper showing so as to entitle her to make service on the defendant by publication as by law provided.

It is therefore ordered, on motion of Bailey E. Bell, attorney for plaintiff, that service of summons in this action may be made on the defendant, by publication, the same to be published in the Anchorage Daily News, a newspaper published in the City of Anchorage, Alaska, which is hereby

designated as the newspaper most likely to give a notice to the defendant, and said publication to be made for four consecutive weeks, and that a copy of the first publication together with a copy of the complaint and supplemental complaint be mailed to the defendant at his last known address, or served on the Defendant Lawrence Savage.

Dated at Anchorage, Alaska, this 30th day of Oct., 1950.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed Oct. 30 1950.

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[Title of District Court and Cause.]

### SUMMONS

To: Jewel Hawkins, Plaintiff, Lawrence Savage, d/b/a Lee Savage Painting Company, Defendant.

You are hereby summoned and required to serve upon the United States Attorney, Third Division, District of Alaska, Intervenor's attorney, whose address is Room 126, Federal Building, Anchorage, Alaska, an answer to the Complaint of Intervention which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judg-

ment by default will be taken against you for the relief demanded in the Complaint of Intervention.

[Seal]

M. E. S. BRUNELLE,

Clerk of Court,

/s/ By CLARK RHODES,

Deputy Clerk.

Dated at Anchorage, Alaska, this 1st day of November, 1950.

U.S. Marshal's Returns attached.

[Endorsed]: Filed Dec. 4, 1950.

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[Title of District Court and Cause.]

### AFFIDAVIT TO OBTAIN SERVICE BY PUBLICATION

United States of America,  
Territory of Alaska—ss.

Shrader Hawkins, being first duly sworn upon oath, deposes and says: That he is acting for Jewel Hawkins, his wife, who is the plaintiff above-named, by reason of a duly executed power of attorney, and that he is representing her under said power of attorney in the handling of the above-entitled case.

That suit was filed and summons issued out of the above-entitled Court and cause on the 28th day of February, 1950; that an attachment bond was filed together with an affidavit for attachment, and that a writ of attachment was also filed; and that



said attachment along with a notice of attachment was duly served on each of the following named persons: Warren Cuddy and Wendell Kay, doing business as Cuddy & Kay; Bank of Alaska by serving E. A. Rasmusson; J. B. Warrack, by serving Leonard Thomas; Paddock's Paint Shop by serving Harold Paddock; and R. W. Jackson, and Stanley McCutcheon and Buell A. Nesbett, doing business as McCutcheon & Nesbett; and that in compliance with said attachment and notice of attachment, J. B. Warrack answered that he was holding funds due the defendant in excess of two thousand three hundred forty one dollars and eighty seven cents (\$2,341.87), and was holding same subject to the further order of this Court; and that said funds are attached at this time.

Affiant further states that this is one of the cases wherein service by publication may be had; that the defendant has property in the hands of J. B. Warrack which has been attached and is subject to be used in the payment of the debt herein sued upon; that the defendant has departed from the Territory of Alaska with intent to defraud his creditors, and to avoid the service of summons and now resides, so this affiant is informed and believes, in Oakland, California. That the plaintiff has and claims a lien on said \$2,341.87 by reason of said sum having been attached; and that service on the defendant cannot be made in the Territory of Alaska; that said defendant is not in the Territory of Alaska; that property, to-wit: \$2,341.87, has been seized by the Court and is now attached and

subject to the orders of this Court, and the plaintiff wishes to obtain service by publication as by law required.

/s/ SHRADER HAWKINS

Subscribed and sworn to before me this 28th day of Oct., 1950.

[Seal] /s/ BAILEY E. BELL,  
Notary Public, Territory of Alaska. My Commission Expires Jan. 28, 1953.

[Endorsed]: Filed Oct. 30, 1950.

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[Title of District Court and Cause.]

### MOTION FOR ORDER OF DEFAULT

Comes now the United States of America, Intervenor herein, by and through J. Earl Cooper, United States Attorney, and moves the Court for an Order of Default herein against the plaintiff, Jewel Hawkins, and the defendant, Lawrence Savage, d/b/a Lee Savage Painting Company, on the ground and for the reason that Intervenor herein filed a Complaint of Intervention against the plaintiff Jewel Hawkins and the defendant Lawrence Savage, d/b/a Lee Savage Painting Company, on the 21st day of September, 1950, after leave of Court first had; that copy of said Complaint of Intervention was served on the above-named plaintiff on the 10th day of August, 1950, and on the defendant on the 14th day of November, 1950, as

more fully appears from the record herein; that the plaintiff Jewel Hawkins and the defendant Lawrence Savage, d/b/a Lee Savage Painting Company have not filed an answer or any pleading whatsoever in answer to said Complaint of Intervention within 30 days after service of said Complaint upon them and have not, up until the date of this motion, given any notice of intention to answer the Intervenor's Complaint.

Dated at Anchorage, Alaska, this 6th day of May, 1952.

/s/ J. EARL COOPER,  
United States Attorney.

Acknowledgment of Service attached.

[Endorsed]: Filed May 8, 1952.

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[Title of District Court and Cause.]

LEVY

Lien No. 17255, No. 17153

United States of America,  
State of Washington

To: Clerk of the U. S. District Court (In re: Lee  
Savage Painting Company vs. Jewel Hawkins).  
At Anchorage, Alaska.

You are hereby notified that there is now due, owing, and unpaid from Lawrence J. Savage, DBA Lee Savage Painting Company, Anchorage, Alaska, to the United States of America the sum of Three

Thousand Eight Hundred Seventy & 20/100 Dollars (\$3,870.20) as and for an internal revenue tax.

You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Tacoma, Washington, this 18th day of December, 1951.

[Seal]            CLARK SQUIRE,  
                    Collector of Internal Revenue  
/s/ By RALPH A. NOERENBERG,  
                    Deputy Collector in Charge

[Endorsed]: Filed Feb. 1, 1952.

Form 69—

(Copy)

### WARRANT FOR DISTRAINT

U. S. Treasury Department

Internal Revenue Service

(Revised Nov. 1949)

No. 51-06839 EMT

Lawrence J. Savage DBA Lee Savage Painting Co.,  
Anchorage, Alaska.

FICA 6-16-50 Final—Dec. 51 298020

Re-Transferred from 1st Dist. of California

Date of First Notice: 6-23-50. Debits: T 126.57.  
Unpaid Balance: 126.57. Penalty of 5 percent. \$6.33.

To....., Deputy Collector.

Whereas, in pursuance of the provisions of the acts of Congress relating to internal revenue, the above-named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes afore-

said. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Witness my hand and official seal at Tacoma, Washington, this 18th day of December, 1951.

/s/ CLARK SQUIRE,

Collector of Internal Revenue, District of Washington

Form 69—

(Copy)

### WARRANT FOR DISTRAINT

U. S. Treasury Department

Internal Revenue Service

(Revised Nov. 1949)

No. 51-1088 WT

Lawrence J. Savage DBA Lee Savage Painting Co.,  
Anchorage, Alaska

WT 9-30-49—Dec. 51 298019

Re-Transferred from 1st District of California

Date of First Notice: 12-28-49.

Date: 6-7-50. Debits: T 2809.00, I 28.09. Credits: 88.30. Unpaid Balance: 2748.79. Penalty of 5 percent \$2837.09—\$141.85.

To....., Deputy Collector.

Whereas, in pursuance of the provisions of the acts of Congress relating to internal revenue, the above-named person or persons is or are liable to pay

the tax or taxes assessed against him, or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Witness my hand and official seal at Tacoma, Washington, this 18th day of December, 1951.

/s/ CLARK SQUIRE,

Collector of Internal Revenue, District of Washington

Form 69—

(Copy)

WARRANT FOR DISTRAINT

U. S. Treasury Department

Internal Revenue Service

(Revised Nov. 1949)

No. 51-1089 WT

Lawrence J. Savage DBA Lee Savage Painting Co.,  
Anchorage, Alaska.

WT 6-16-50 Final—Dec. 51 298020

Re-Transferred from 1st District of California

Date of First Notice: 6-23-50. Debits: T 505.90.  
Unpaid Balance: 505.90. Penalty of 5 percent,  
\$25.30.

To....., Deputy Collector.

Whereas, in pursuance of the provisions of the acts of Congress relating to internal revenue, the above-named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named above, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; And Whereas, 10 days have elapsed since notice served and demand made upon said person or persons for payment of said tax or taxes; And Whereas,



said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement above, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Witness my hand and official seal at Tacoma, Washington, this 18th day of December, 1951.

/s/ CLARK SQUIRE,

Collector of Internal Revenue, District of Washington

[Printer's Note: The attached Notice of Tax Liens Under Internal Revenue Laws are duplicates of Exhibits A and B sent out in full at pages 29-32 of this printed Record.]

[Title of District Court and Cause.]

### MOTION FOR ORDER OF DEFAULT

Comes now the above named plaintiff, Jewel Hawkins, and moves the Court to enter an order of default herein against the defendant, Lawrence Savage, d/b/a Lee Savage Painting Company and for grounds of this motion states: That this action was duly filed on or about the 27th day of February, 1950; that an attachment was issued and certain funds were attached as the property of the defendant; that thereafter the Summons issued at the filing of the case was returned nulla bona due to the fact that the defendant was not in the Territory of Alaska; and that thereafter affidavit for the purpose of procuring permission to get service by publication was duly filed and that order was made directing service by publication for and on behalf of the plaintiff, and that service was duly perfected on the defendant, and that the time has long since expired for the defendant to plead or answer the plaintiff's amended and supplemental Complaint, and that said defendant is now in default.

This motion is based upon the records and files in this cause.

Dated at Anchorage, Alaska, this 23rd day of May, 1952.

BELL & SANDERS,  
/s/ By BAILEY E. BELL,  
Of Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 23, 1952.

[Title of District Court and Cause.]

ORDER OF DEFAULT

This matter coming on to be heard on the plaintiff's motion for an order of default, and the Court being fully advised in the premises finds the motion well taken.

Now, therefore, an order of default as to the defendant Lawrence Savage, d/b/a Lee Savage Painting Company, is hereby granted and ordered.

Dated at Anchorage, Alaska, this 6th day of June, 1952.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed June 6, 1952.

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[Title of District Court and Cause.]

HEARING ON MOTION FOR ORDER  
OF DEFAULT

Now at this time hearing on motion for order of default in cause No. A-6011, entitled Jewel Hawkins, Plaintiff, versus Lawrence Savage, d/b/a Lee Savage Painting Company, Defendant, came on regularly before the Court, J. Earl Cooper, United States Attorney, appearing for the Government, Intervenor, and Bailey E. Bell, appearing for and in behalf of the plaintiff. The following proceedings were had, to-wit:

Argument to the Court was had by J. Earl Cooper,

United States Attorney, for and in behalf of the Intervenor.

Argument to the Court was had by Bailey E. Bell, for and in behalf of the plaintiff.

Argument to the Court was had by J. Earl Cooper, United States Attorney, for and in behalf of the Intervenor.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises directs plaintiff to file Answer to complaint in intervention.

Entered in Journal June 27, 1952.

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[Title of District Court and Cause.]

### ANSWER OF PLAINTIFF JEWEL HAWKINS TO COMPLAINT OF INTERVENTION

Comes now Jewel Hawkins, plaintiff above named, and first having obtained leave of the Court so to do, files this, her Answer to the Complaint of Intervention filed for and on behalf of the United States of America, Intervenor, and for answer to said complaint admits, denies and alleges as follows, to-wit:

#### I.

Admits that the plaintiff did commence the above-entitled action as an individual against the defendant named above, and did on that date cause an attachment to be issued, on which attachment \$2,-341.87 was attached in the hands of J. B. Warrack

& Company by the United States Marshal of this District as the property of the defendant.

## II.

Plaintiff admits the allegations of Paragraph II.

## III.

Plaintiff is not sufficiently informed of the truth or falsity of the allegations in paragraph III of said Complaint in intervention, and therefore denies said allegations, and the whole thereof, and asks that said Intervenor be held to strict proof thereof.

In answer to Intervenor's Second Cause of Action, plaintiff alleges and states as follows:

### I.

This plaintiff, for answer to paragraph I of the Intervenor's Second Cause of Action, adopts and makes her answer thereto the same as previously answering said paragraph I and II, as above set forth.

### II.

Plaintiff, for answer to paragraph II of the Intervenor's Second Cause of Action, not being sufficiently advised so as to form an opinion as to the truth or falsity of said allegations, denies the same, and the whole thereof, and asks that the Intervenor be held to strict proof thereof.

### III.

Plaintiff specifically denies that if the Intervenor is entitled to a judgment for any sum against the defendant Lawrence Savage, d/b/a Lee Savage Painting Company, that said judgment should be

prior to the judgment that the plaintiff is entitled to in this case, and affirmatively alleges that her lien on the attached property referred to as being in the hands of J. B. Warack & Company is a first and prior lien in her favor against said money, and states that she is entitled to have said money appropriated and applied to the payment of her judgment against the defendant and prior to any right that the Intervenor has herein.

Wherefore, plaintiff having fully answered the complaint in intervention, prays that she recover as in her original complaint set forth and that the amount of her recovery be declared prior and superior to any right of the Intervenor insofar as the same affects the attached money referred to in the complaint in intervention and as shown by the records in this case; that the Intervenor, United States of America, recover no judgment which would in any way affect the plaintiff's rights to hold and receive the attached money above referred to or any part thereof.

Dated at Anchorage, Alaska, this 27th day of June, 1952.

BELL & SANDERS,  
/s/ By BAILEY E. BELL,  
Of Attorneys for Plaintiff.

Acknowledgment of Service.

Duly Verified.

[Endorsed]: Filed June 27, 1952.

[Title of District Court and Cause.]

M. O. SETTING CAUSE FOR TRIAL

Now at this time upon Court's own motion,  
It is ordered that cause No. A-6011, entitled Jewel Hawkins, plaintiff, versus Lawrence Savage, doing business as Lee Savage Painting Company, defendant, be, and it is hereby, set for trial at 11:00 o'clock a.m. this date.

Entered in Journal Sept. 17, 1952.

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[Title of District Court and Cause.]

TRIAL BY COURT

Now at this time cause No. A-6011, entitled Jewel Hawkins, plaintiff, versus Lawrence Savage, doing business as Lee Savage Painting Company, defendant, United States of America, intervenor, came on regularly for trial, the plaintiff not present, but represented by Bailey E. Bell of her counsel, the defendant not being present nor represented by counsel, Intervenor of United States of America not represented, and defendant's default having been duly and regularly entered on the 17th day of September, 1952, the following proceedings were had, to-wit:

Opening statement to the Court was had by Bailey E. Bell for and in behalf of the plaintiff.

Opening statement to the Court was had by Thomas R. Winter for and in behalf of the Government.

A packet of 14 checks all signed by Lawrence Savage was duly offered, marked and admitted as plaintiff's Exhibit 1.

Bailey E. Bell for and in behalf of the plaintiff moved for default judgment as against defendant Lawrence Savage.

Motion was granted.

Two copies of Notice of Tax Liens under Internal Revenue Laws Nos. 17153 and 17255 was duly offered, marked and admitted as Intervenor's Exhibit "A".

A certificate of assessments and payments in re. Lawrence J. Savage, Lee Savage Painting Co. was duly offered, marked and admitted as Intervenor's Exhibit "B".

All of the papers in the official Court file concerning the attachment: affidavit of attachment, writ of attachment, notice of attachment as to J. B. Warrack Co., undertaking on attachment and the return on affidavit of attachment was duly offered, marked and admitted as Intervenor's Exhibit "C" and are to remain in the Court file.

A notice of levy, dated 6/12/50, on J. B. Warrack Co., by Collector of Internal Revenue was duly offered, marked and admitted as Intervenor's Exhibit "D".

A notice of levy, dated 6/30/50, on J. B. Warrack Co., by Collector of Internal Revenue was duly offered, marked and admitted as Intervenor's Exhibit "E".

Copy of a levy on J. B. Warrack Company by Collector of Internal Revenue was duly offered,



marked and admitted as Intervenor's Exhibit "F".

Intervenor's Exhibits D, E, F to be substituted by copies.

Plaintiff is given 15 days to file brief.

Intervenor given 15 days to file reply briefs.

Whereupon the Court being fully and duly advised in the premises, it would reserve its decision.

Entered in Journal Sept. 17, 1952.

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[Title of District Court and Cause.]

### OPINION

Bell & Sanders, Anchorage, Alaska, Attorneys for Plaintiff.

No appearance by Defendant.

Seaborn J. Buckalew, United States Attorney, Anchorage, Alaska, Attorney for Intervenor.

This is a contest between the plaintiff suing and attaching to recover indebtedness due to her from the defendant and the United States coming in as an intervenor and seeking to collect taxes due to it from the defendant by application of the attached property. The property attached and upon which the intervenor seeks to enforce its lien, is in the sum of \$2,341.87 in money owing from the garnishee, J. B. Warrack Co., to the defendant. It is not asserted or suggested that any other property is involved.

Priority turns upon the sequence of the various

actions taken and upon the nature and effect of the attachment as governed by the general tax laws and the laws concerning attachments in the Territory of Alaska. The chronological sequence may be stated as follows:

December 27-28, 1949: Assessment lists received by the Collector of Internal Revenue and notices and demands made upon defendant taxpayer, Lawrence Savage, covering withholding and Federal Contributions Act taxes due for the quarter ended 9/30/49 in the principal sum of \$2,711.90, plus penalties, interests and costs legally due thereon.

February 27, 1950: Plaintiff Jewel Hawkins commenced this action against the defendant taxpayer, Lawrence Savage, seeking to recover on NSF checks issued by the defendant in the sum of \$2,341.87 plus costs and attorneys' fees, and filed an undertaking and attachment and affidavit for attachment and writ of attachment was issued.

April 19, 1950: Writ of attachment served on J. B. Warrack Co., garnishee, who made return saying that said J. B. Warrack Co. held money in the sum of \$2,341.87, due to the defendant, Lawrence Savage.

June 12, 1950: Notice of levy for taxes due the United States in the principal sum of \$2,969.05 was served on J. B. Warrack Co. by the Collector of Internal Revenue.

June 13, 1950: Notice of tax lien was filed with the United States Commissioner at Anchorage, Alaska.

June 22, 1950: Second assessment list was re-

ceived by the Collector of Internal Revenue and notice and demand was made on the defendant, Lawrence Savage, covering withholding and Federal Insurance Contributions Act taxes due for the period ended June 16, 1950, in the sum of \$632.47.

June 30, 1950: Second notice of tax lien was filed with the United States Commissioner, Anchorage, Alaska.

June 30, 1950: Second notice of levy was served on J. B. Warrack Co., covering second assessment of \$632.47.

J. B. Warrack Co., as recited above, acknowledges that it is indebted to the defendant, Lawrence Savage, in the total sum of \$2,341.87, but in view of this litigation, the Company has retained possession of the money to be paid out to the person designated by the Court, or will pay the same into Court in this action upon the order of the Court. The plaintiff's claim against defendant is taken as confessed by default and the Court has ordered entry of judgment in favor of the plaintiff and against the defendant for the amount claimed but has deferred determination as to the status of the fund attached.

The Government asserts priority under the following quoted provisions of the Federal Statutes:

“Whenever any person indebted to the United States is insolvent, \* \* \* the debts due the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, con-

ceased or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." 31 USC 191 (Sec. 3466, Rev. Stat.).

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 26 USC 3670.

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." 26 USC 3671.

"(a) Such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice has been filed by the collector:

(1) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) In the office of the clerk of the United States district court for the judicial district in which the property subject to lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; \* \* \*"

26 USC 3672.

Section 3466 R.S. embraced in Title 31, Sec. 191,

USC, needs no extended consideration. This applies only to insolvent debtors. There is nothing in the pleadings in this case to indicate insolvency of the defendant, Lawrence Savage, even though one may guess from the facts stated that he may well be and have been insolvent. As early as 1828, in *Conard vs. Atlantic Insurance Company of New York*, 26 U.S. 355, the Supreme Court held that mere inability to pay debts is not insolvency within the meaning of this statute, and that insolvency must be manifested in one of the three ways listed above in Section 3466. The same Court expressed the same view in *Bramwell vs. U.S. Fidelity Co.*, 269 U.S. 483 (1926). A discussion of Government priority for taxes may be found in 9 Merten's *Laws of Federal Income Taxation*, 573 et seq. In the absence of any allegation of insolvency, no further consideration need be given to the possible application of 3466, except as incidental to the force and effect of Title 26, Sections 3670, 3671 and 3672, USC, also quoted above.

Coming now to the three sections of Title 26 mentioned, we may first consider the plaintiff's contention that the liens were improperly recorded in the Commissioner's Office. That argument is clearly without merit. Plaintiff says that the Territorial law makes no provision for filing such liens in any other office, and therefore, the only proper place for filing is that of the Clerk of the United States District Court. The answer lies in the Act of the Territorial Legislature of 1933, Chapter 94 of the Session Laws of Alaska of that year, carried

forward into Chapter 9, Title 48, Section 48-9-1 et seq. Alaska Compiled Laws Annotated, 1949. The title of the Act is "An Act authorizing the notices of liens for taxes payable to the United States of America and certificates discharging such liens and to make uniform the laws relating thereto." The Treasury Department has indicated its approval of this procedure. I.T. 2894, C.B. XIV-1, page 239.

The Government's claims of liens were filed in the Office of the United States Commissioner and ex-officio Recorder for the Anchorage Precinct, Third Judicial Division, Territory of Alaska, and there was no need for additional filing in the Office of the Clerk of the District Court.

The plaintiff urges that there is no pleading or proof of demand for the payment of the tax by the intervenor which appears to be indispensable under Sec. 3670. While no demand is pleaded, the proof adequately shows demand, and under the liberal provisions of Rule 15 of the Federal Rules of Civil Procedure, the complaint in intervention may be considered as amended to embrace the averment of demand. To dispose of the case upon lack of demand because not pleaded would scarcely be in harmony with the elementary principles of justice. The demand must have been made because it was sufficiently proved.

That brings us to the really crucial point, that is, whether the attachment made by the plaintiff of the money due the defendant in the hands of the garnishee should take priority over the lien of the

intervenor, United States, arising under Section 3670 et seq., supra.

Counsel for the intervenor urge that the Government's lien arose when the assessment lists were received by the Collector of Internal Revenue on December 27, 1949, and that despite the additional provisions of law contained in Sections 3671 and 3672, that lien is entitled to priority and must prevail against any attachment made at a later date. Indeed the Government's claim is so far-reaching as to require that all adverse claims whether in favor of a mortgagee, pledgee, purchaser or judgment creditor, as set out in Section 3672, must yield to the priority of the lien of the United States arising under Section 3670 if that lien arose or came into being at a date prior in time to the origin of any "valid" claim made by any person under 3672. To sustain such a theory it would be necessary to contradict the force and effect of the legislative history of the statutes mentioned. Sec. 3672 was enacted to protect what are commonly known as innocent purchasers for value, the word "purchasers" embracing all those classes of persons who may deal in the property of a debtor while other and secret liens against that property may exist. Neither the decision of the Supreme Court in *United States vs. Security Trust and Savings Bank of San Diego*, 340 U.S. 47 (1950) nor that of our own Court of Appeals in *Alexander MacKenzie vs. United States*, 109 F (2d) 540 (1940) sustains such a view of the law. In fact, the inferences to be rightly drawn from Judge Stev-

ens' opinion in the MacKenzie case leads one to the opposite conclusion. Two recent cases are deserving of note, Sunnyland Wholesale Furniture Co. vs. Liverpool & London & Globe Ins. Co., (D.C.N.D. Texas, Oct. 1952) 107 F. Supp. 405, and U.S.A. vs. Acri, (D.C.N.D. Ohio, Oct. 1952) Commerce Clearing House Standard Federal Tax Reporter, Sec. 9104, p. 47108.

This is one of the numerous cases where definitions of words and terms may be not only helpful but decisive. Some thousands of years ago, the Chinese sage and philosopher, Confucius, pointed out and emphasized not only the high desirability but the overriding need of exact definitions when considering matters of law. When asked as to the first reform he would introduce upon taking up the management of Government, it is reported that he replied, "I would begin by defining terms and making them exact." Perhaps even now that is not only good philosophy but also sound law.

For our present requirements, an adequate review of the legislative history of Sections 3670, 3671 and 3672 is to be found in Justice Jackson's concurring opinion in the Security Trust and Savings Bank case, *supra*, and so we know that Sec. 3671 and Sec. 3672 were enacted to give relief from the manifestly unjust effects of the rigid application of Sec. 3670.

Arrival at a correct conclusion will be speeded by defining two words, "arise" and "valid" used in the relevant statutes. In Sec. 3671, reference is made to the date when the "lien shall arise". What



is meant by the word "arise"? The answer is relatively simple. A lien "arises" at the time it comes into being or is created. Another word might have been used by the draftsman but the word "arise" brings about no difficulty.

However, in Sec. 3672, we find that "such liens shall not be valid" as against certain categories of persons or parties until "notice has been filed with the Collector", thus we must determine what is meant by the word "valid". Common knowledge as well as the dictionaries tell us that the word "valid" has several meanings. Bouvier says, "Having force; of binding force; legally sufficient or efficacious; authorized by law". The Oxford English Dictionary gives in part the following: "Good or adequate in law; possessing legal authority or force; legally binding or efficacious". In Ballentine we find, "Effective; operative; not void; subsisting; sufficient in law". And coming last to Webster's International Dictionary, the definition of "valid" includes, "having legal strength or force; \* \* \* legally sufficient or efficacious; incapable of being rightfully overthrown or set aside \* \* \*."

The reasonable conclusion, therefore, is that the lien created by Sec. 3670, which arises at the time the assessment list is received by the Collector as set out in Sec. 3671, has no binding force, no legal authority, is not legally sufficient or efficacious, and lacks the authority of law unless and until it is recorded as provided in Sec. 3672. This is not a mere exercise in logomachy or semantics, or akin to the sometimes disputed visions of telekinesis, but the in-

evitable conclusion attained through resort to exact definition in order to determine the construction that should rightfully and logically be placed upon the terms used by a legislative body in making law on a subject of consequence.

It is therefore here held that the plaintiff in this action is entitled to prevail if she falls within one of the categories of persons who are protected by Section 3672. Without any extended citation of authority or resort to the philosophical niceties of the logic of Aristotle or Emmanuel Kant, it is at least reasonably certain that in order to secure priority as against a tax lien of the United States, the adverse claimant for the property involved in this case, the plaintiff, Hawkins, must fairly and reasonably be embraced within one of the four classes whose rights are preserved by Section 3672, namely, as a mortgagee, a pledgee, a purchaser or a judgement creditor. In all of this, it is to be remembered that the notice of the Government lien was not filed in the local recording office until after the attachment was made by the plaintiff.

Obviously, the plaintiff is not a mortgagee, or a pledgee, or a judgement creditor, because the plaintiff's judgement could not possibly have been entered until after the Government filed its notice of lien as required by Sec. 3672; and so the plaintiff cannot prevail in this action unless under the law, she was a "purchaser" of the property before the Government's lien was filed for record on June 13, 1950. This leads us to the nature of attachment under the laws of Alaska.

The statutes of Alaska concerning attachments are to be found in Article 4, Sections 55-6-51 to and including Section 65-6-71 of ACLA, but the sections which have immediate and intimate bearing on the question involved are Sections 55-6-61 and Section 55-6-67 of ACLA. The first section reads as follows:

“Sec. 55-6-61. Cases in which plaintiff may attach: Time. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this article provided, in the following cases:

First. In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security is insufficient to satisfy a judgment for the amount justly due the plaintiff.

Second. In an action upon a contract, express or implied, against a defendant not residing in the Territory.”

Section 55-6-67 is quoted below:

“Sec. 55-6-67. Plaintiff's rights against third persons: Liability of persons failing to transfer property to marshal. From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next sec-

tion as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, or debts be delivered, transferred, or paid to the marshal, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied."

The sections above quoted are a part of the Act of Congress of June 6, 1900, an act making further provisions for the civil Government of Alaska. They are in no sense enactments of the Territorial Legislature, and, therefore, this case distinguishes itself from cases like those cited by counsel in which the Federal Courts are under the duty of construing as Federal questions the prior construction which may have been given by State Courts to statutes with respect to attachments and other claims for security operating counter to the interest of the United States in collecting its taxes under the laws of the United States. While in such cases it may be considered that the Congress of the United States in passing our existing laws concerning attachments acted as a territorial legislature, we must yet remember that our attachment statute is part of an Act of the United States Congress even though of local application only. Now, the Congress of the United States has said in Section 55-6-67 that "from the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith or for a valuable consideration of the property, real or

personal, attached \* \* \* \*". (Emphasis supplied.) Therefore, we find that under our laws so enacted by Congress, the plaintiff who attaches is and must be considered by the Courts as a purchaser in good faith and for a valuable consideration of the property attached. Hence, it seems plain that the plaintiff in this case brings herself clearly within the provisions of Section 3672 as a purchaser of the property. She is not a lien holder, she is not to be thought of as having inchoate right, but she is a purchaser, and not only a purchaser, but a purchaser in good faith and for a valuable consideration. No language could be more precise and none could be more emphatic for the support of the plaintiff's rights.

In this connection, it is deserving of note that the provisions of our procedural code with respect to attachments, like most of the other matter contained in the act of June 6, 1900, was adopted verbatim from the laws of Oregon. Section 55-6-67 ACLA 1949 is to be found in 1 Hill's Oregon Laws, Section 150, and is carried forward into the current laws of Oregon, 1 Oregon Compiled Laws Annotated, Sec. 7-207, the wording of which is identical with that of our statute.

The Supreme Court of Oregon has uniformly held that under the provisions of the attachment law mentioned, an attaching creditor is given the same position as that of a purchaser. The following are examples of the cases on the subject: *Jennings v. Lentz*, 93 P. 327 (1908); *Security Savings & Trust Co. v. Loewenberg*, 62 P. 647 (Ore., 1900). More im-

portant still, the rule was well established in Oregon before the passage of the Act of June 6, 1900. *Boehreinger v. Creighton*, 10 Ore. 42 (1881); *Riddle v. Miller*, 23 P. 807 (1890); *Rhodes v. McGarry*, 23 P. 971 (1890); *Meier v. Hess*, 32 P. 755 (1893). It is at least to be presumed that when our attachment statute was thus adopted from the laws of Oregon it was so adopted with the construction which had theretofore been placed upon it by the Supreme Court of that State, a construction which has never been departed from by that Court so far as known.

The plaintiff in this action under the law is a purchaser of the money attached against "third-persons" and those third persons in the absence of legislation cannot fail to embrace the United States. Accordingly, plaintiff's claim as to the property attached is entitled to priority of payment and the tax lien of the United States is subordinate thereto.

Plaintiff may have judgment against the defendant for the sum of \$2,341.87, and the attachment made of that sum in the hands of J. B. Warrack Co., garnishee, shall be paid to the plaintiff in satisfaction of the judgment.

The lien of the United States, intervenor, on the funds so attached is subject and subordinate to the attachment lien of the plaintiff and to the judgment which may be rendered herein, and the attached money shall be paid to the plaintiff upon the judgment so rendered herein free and clear of all liens of the intervenor thereon.

The intervenor may not have judgment in this action against the defendant for the amount of its

tax lien. No personal judgment may be rendered herein in favor of the intervenor and against the defendant for the reason that no personal service of the summons issued upon the complaint in intervention, or of the summons issued upon the original complaint, in this action was made upon the defendant within the Territory of Alaska and hence recovery must be confined to the property attached and thus brought within the jurisdiction of the Court; and all of the attached property under the judgment rendered herein in favor of the plaintiff shall be applied in payment of that judgment. *Penoyer v. Neff*, 95 U. S. 714 (1877).

Dated at Anchorage, Alaska, this 9th day of March, 1953.

/s/ ANTHONY J. DIMOND,  
District Judge

[Endorsed]: Filed March 9, 1953.

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[Title of District Court and Cause.]

### AFFIDAVIT OF MAILING

United States of America  
Territory of Alaska—ss:

Bailey E. Bell, being first duly sworn, upon oath deposes and states as follows, to wit:

That on the 24th day of January, 1951, he placed a copy of the Complaint, a copy of the Affidavit of Attachment, and a copy of the Summons, issued in

the above entitled Court, dated the 22nd day of January, 1951, together with a copy of the Anchorage Daily News, a newspaper of general circulation in Anchorage, Alaska, in an envelope duly addressed to Lawrence Savage, d/b/a Lee Savage Painting Company, and placed proper postage thereon, and deposited it in the United States Mail, which envelope was addressed to Oakland, California, that being the last known address of the Defendant, Lawrence Savage, d/b/a Lee Savage Painting Company.

Further affiant sayeth not.

/s/ BAILEY E. BELL

Subscribed and sworn to before me, this 19th day of March, 1953, at Anchorage, Alaska.

[Seal] /s/ WILLIAM H. SANDERS,  
Notary Public in and for Alaska. My Commission  
expires: 5-22-54.

[Endorsed]: Filed March 19, 1952.

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[Title of District Court and Cause.]

### ORDER AMENDING OPINION

It now appearing that inadvertent errors were made in the opinion in the above entitled action dated March 9, 1953, and filed herein on the same date, in order to correct said errors it is hereby

Ordered that the dollar sign and figures appear-



ing on page 1 of the opinion near the middle of the page, “\$2,341.97” be stricken and that the following be inserted in lieu thereof “\$2,341.87”, and it is further

Ordered that the dollar sign and figures appearing on page 2 of the opinion in the second line of paragraph in middle of page, “\$3,284.86” be stricken and that in lieu thereof the following be inserted: “\$2,341.87”, and it is further

Ordered that the Clerk of the Court amend the original opinion in conformity with this Order.

Dated at Anchorage, Alaska, this 19th day of March, 1953.

/s/ ANTHONY J. DIMOND,  
District Judge

[Endorsed]: Filed March 19, 1953.

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[Title of District Court and Cause.]

### MINUTE ORDER

Continuing Time to File Objections to Findings of Fact and Conclusions of Law and Judgment.

Now at this time upon motion of Arthur David Talbot, Assistant United States Attorney, for and in behalf of intervenor United States of America, in cause No. A-6011, entitled Jewel Hawkins, Plaintiff, versus Lawrence Savage, d/b/a Lee Savage Painting Company, Defendant, United States of America, Intervenor,

It is Ordered that Intervenor, United States of America be given one week within which to file objections to Findings of Fact and Conclusions of Law and Judgment.

Entered in Journal March 27, 1953.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This matter, coming on to be heard on the 17th day of September, 1952; the plaintiff appeared by Bailey E. Bell, her attorney; the defendant, Lawrence Savage, d/b/a Lee Savage Painting Company, did not appear; and the Court, having examined the service, finds that he was duly served and has heretofore been adjudged to be in default on the plaintiff's Complaint and Amended Complaint, as shown by the proof of publication in the files of this case. The intervenor, United States of America, appeared by Seaborn J. Buckalew, United States Attorney, at Anchorage, Alaska, and Thomas R. Winter, Civil Advisory Counsel, Bureau of Internal Revenue, Seattle, Washington. All parties announced ready for trial and introduced their evidence, and after the evidence was introduced, arguments were had and the case was taken under advisement by the Court, and both the plaintiff and defendant were given permission and directed to file briefs, which have been duly filed.

Thereafter, and on the 9th day of March, 1953,

the Court filed in said cause its written opinion finding in favor of the plaintiff, Jewel Hawkins, and directed the preparation, serving and presenting of Findings of Fact, Conclusions of Law and Decree, and from the pleadings, the evidence, arguments and briefs, the Court makes the following its Findings of Fact:

### Findings of Fact

#### I.

That the plaintiff commenced this action against the defendant on the 27th day of February, 1950, for the recovery of \$2,341.87, plus cost and attorney's fees, and caused an attachment to issue on that date.

#### II.

Thereafter, and on April 19, 1952, the writ of attachment was duly served on J. B. Warrack Co., who answered holding \$2,341.87 due the defendant, Lawrence Savage.

#### III.

The plaintiff introduced in evidence fourteen checks drawn by defendant, presented to the bank on which they were drawn for payment, and payment was refused by reason of insufficient funds in the bank to pay said checks, the total of said fourteen checks amounting to \$3,120.38.

#### IV.

The intervenor, United States of America, introduced all of its exhibits referred to in the Complaint of Intervenor, and rested.

## V.

The Court further finds that the plaintiff is entitled to recover against the defendant, Lawrence Savage, d/b/a Lee Savage Painting Company, only insofar as there is money attached in the hands of J. B. Warrack Co., which amount equals at least \$2,341.87, as shown by the return of attachment filed herein, but is not entitled to recover, and the decree rendered herein is not intended to be a personal judgment, but only insofar as funds are attached in possession of J. B. Warrack Co. for the payment thereof.

## VI.

The Court further finds that the intervenor, United States of America, is entitled to no judgment in this action at this time, and the cause will be continued as to said intervenor.

\* \* \* \* \*

## VIII.

That the attachment in this action, raised, issued and caused to be served by the plaintiff attaching certain funds in the hands of J. B. Warrack Company, is hereby sustained and affirmed, and the plaintiff is entitled to a judgment of this Court requiring the garnishee, J. B. Warrack Company, to pay said money, \$2,341.87, to the plaintiff or her attorneys.

## IX.

Further finds that when J. B. Warrack Co. pays said sum to the plaintiff or her attorneys of record, and takes a receipt therefor, that the said J. B.

Warrack Co. is fully and completely released from any liability to the plaintiff in this action.

And from such Findings of Fact, the Court makes the following its Conclusions of Law:

Conclusions of Law

I.

That the plaintiff is entitled to a judgment on her Complaint for \$2,341.87 and costs of this action in the sum of \$....., but the total amount of the defendant's liability under such judgment shall not exceed \$2,341.87.

II.

That the plaintiff's attachment be sustained and that J. B. Warrack Co. pay to plaintiff, or her attorneys, for the use and benefit of the plaintiff, said sum of money, \$2,341.87.

III.

That the United States of America, intervenor, is not entitled to judgment for any sum in this case at this time and said cause may be continued as to said intervenor.

IV.

That judgment be rendered in this case in conformity with the opinion filed herein, the Findings of Fact and Conclusions of Law, which judgment is not in personam but only to the extent that funds have been attached in the hands of J. B. Warrack Co., to-wit, \$2,341.87.

Dated at Anchorage, Alaska, this 8th day of April, 1953.

/s/ ANTHONY J. DIMOND,  
District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed April 8, 1953.

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In The District Court for the Territory of Alaska,  
Third Division

No. A-6011

JEWEL HAWKINS, Plaintiff,

vs.

LAWRENCE SAVAGE, d/b/a LEE SAVAGE  
PAINTING COMPANY,

Defendant,

UNITED STATES OF AMERICA,

Intervenor.

### JUDGMENT FOR PLAINTIFF

This matter coming on to be heard as shown by the records and files in this cause on the 17th day of September, 1952, plaintiff appeared by her attorney, Bailey E. Bell, the defendant appeared not, although duly served with Summons by publication, as by law required, and the Intervenor, United States of America, appeared by Seaborn J. Buckalew and Thomas R. Winger; all parties announced ready for trial; the plaintiff introduced fourteen

checks of which she was the owner, which checks had been drawn by the defendant, Lawrence Savage, d/b/a Lee Savage Painting Company, had been duly presented to the bank on which they were drawn and payment had been refused by reason that there were no funds to pay said checks in said account, and that she proved to be the owner and holder thereof; and the total sum of said checks amounted to \$3,120.38.

It is further decreed that the following checks which were introduced as exhibits be returned to plaintiff's attorney, to-wit: (a) the check dated the 20th day of August, 1949, issued to John Widener, for the sum of \$600.00; (b) the check dated August 20, 1949, issued to Frank Lancaster, in the sum of \$60.00; (c) the check dated August 24, 1949, to John Donnell, in the sum of \$31.01; (d) the check dated August 12, 1949, to Donald Purnell, for the sum of \$87.50; for the reason that they are not sued on in the Complaint and this action in no way affects said checks, the same having been introduced through inadvertence and by mistake.

The intervenor, United States of America, introduced its evidence and all parties rested, and after argument the case was taken under advisement by the Court and a decision reserved. Both parties were directed to file briefs, which briefs were filed, and after full and complete consideration of the pleadings, the evidence, and the briefs, the Court filed its written opinion on the 9th day of March, 1953, in the above entitled cause.

Now, therefore, Findings of Fact and Conclusions of Law having been prepared, served, submitted,

and signed, and the Court being fully advised in the matter, finds the issues in favor of the plaintiff and against the defendant and against the intervenor, United States of America; that the plaintiff is entitled to and is hereby given a decree in said cause of action for \$2,341.87, together with interest thereon at the rate of 6% per annum from the time of the filing of this action, to-wit: February 27, 1950, together with all costs but the total liability of defendant to plaintiff hereunder shall be \$2,341.87, and no more.

It is further considered, ordered and adjudged that no personal judgment shall be rendered against Lawrence Savage, d/b/a Lee Savage Painting Company, but that the plaintiff may have judgment in rem against the funds held by J. B. Warrack Co. for the sum of \$2,341.87, with interest and costs of this action, as above stated.

It is further considered, ordered, adjudged and decreed that the attachment raised, issued and served in the above entitled cause on behalf of the plaintiff, Jewel Hawkins, be, and the same is hereby affirmed and sustained in its entirety, and that J. B. Warrack Co. be, and it is hereby ordered, to pay to the plaintiff or her attorneys of record, Bell & Sanders, the sum of money held by them for plaintiff herein, in the sum of \$2,341.87.

It is further adjudged and decreed that when the said J. B. Warrack Co. pays said sum of \$2,341.87 to the plaintiff or to her attorneys of record, Bell & Sanders, and takes a receipt therefor, and that from then on the said J. B. Warrack Co. is forever re-



leased from any liability to the plaintiff in this action.

It is further adjudged and decreed that this cause shall be continued and further proceedings taken and judgment and decree made with respect to the claims of the Intervenor against the defendant herein.

Dated at Anchorage, Alaska, this 8th day of April, 1953.

/s/ ANTHONY J. DIMOND,  
District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed April 8, 1953.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the United States of America, intervenor above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 8, 1953.

/s/ ARTHUR D. TALBOT,  
Assistant United States Attorney, Third Judicial  
Division, Territory of Alaska, Attorney for  
Intervenor United States of America.

[Endorsed]: Filed April 14, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION

To: Bell & Sanders, Central Building, Anchorage,  
Alaska.

Sirs:

Please take notice that on April 20, 1953, at 10:00 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard the undersigned will move this Honorable Court for an order, pursuant to Rule 62 of the Federal Rules of Civil Procedure, staying the execution of or any proceedings to enforce the judgment herein, entered on April 8, 1953, pending the appeal herein by intervenor United States of America, on the ground that United States will be prejudiced if plaintiff is granted execution on the judgment herein before the determination of the appeal.

/s/ ARTHUR D. TALBOT,

Assistant United States Attorney

Acknowledgment of Service attached.

[Endorsed]: Filed April 14, 1953.

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[Title of District Court and Cause.]

HEARING ON MOTION FOR STAY OF  
EXECUTION

Now at this time Hearing on Motion for Stay of Execution in cause No. A-6011, entitled Jewel Hawkins, plaintiff, United States of America, Inter-

venor, versus Lawrence Savage, d/b/a Lee Savage Painting Company, defendant came on regularly before the Court, Arthur David Talbot, Assistant United States Attorney, present for and in behalf of the Government, Bailey E. Bell, appearing for and in behalf of the Plaintiff, the following proceedings were had, to-wit:

Argument to the Court was had by Arthur David Talbot, Assistant United States Attorney, for and in behalf of the Government.

Argument to the Court was had by Bailey E. Bell, for and in behalf of the Plaintiff.

Whereupon, the Court granted Motion for Stay of Execution.

Entered in Journal April 20, 1953.

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[Title of District Court and Cause.]

### ORDER

The United States of America, having moved the Court for an order, pursuant to Rule 62 of the Federal Rules of Civil Procedure, staying the execution of or any proceedings to enforce plaintiff's judgment herein, entered on April 8, 1953, pending the appeal of Intervenor United States of America, and argument having been had thereon on April 20, 1953, Arthur D. Talbot, Assistant United States Attorney, having been heard in support of said motion, and Bailey E. Bell, of Bell and Sanders, attorneys for plaintiff, having been heard in opposi-

tion thereto, and due deliberation having been had thereon, it is hereby

Ordered that a stay of execution of or any proceedings to enforce plaintiff's judgment herein, entered on April 8, 1953, be and the same is hereby granted pending the appeal of Intervenor United States of America, until such time as the appeal has been abandoned or determined, and it is further

Ordered that the garnishee, J. B. Warrack Company, pay into the Registry of the Court \$3,284.86, said sum representing the total indebtedness of J. B. Warrack Company to the defendant herein, as admitted by J. B. Warrack Company in its return on the notice of tax levy served upon J. B. Warrack Company by the United States Collector of Internal Revenue on June 12, 1950, and it is further

Ordered that upon payment of \$3,284.86 into the Registry of the Court the said garnishee, J. B. Warrack Company, shall be discharged of any further liability in respect of this action.

Dated at Anchorage, Alaska, this 21st day of April, 1953.

/s/ ANTHONY J. DIMOND,  
District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed April 21, 1953.

[Title of District Court and Cause.]

ORDER

On the ex-parte application of Intervenor, United States of America, the Court being fully advised, it is

Ordered that the time for filing the record on appeal with the United States Court of Appeals for the Ninth Circuit and for docketing therein the appeal taken by intervenor by notice of appeal filed on the 14th day of April, 1953, is extended to July 1, 1953, pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure.

Done at Anchorage, Alaska, this 18th day of May, 1953.

/s/ ANTHONY J. DIMOND,  
United States District Judge.

Acknowledgment of Service attached.

[Endorsed]: Filed May 18, 1953.

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[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

In the captioned case the Intervenor designates the entire record as the record on appeal, including

all pleadings, all exhibits, and the transcript of the proceedings.

SEABORN J. BUCKALEW,  
 United States Attorney.  
 /s/ ARTHUR D. TALBOT,  
 Assistant U. S. Attorney.

Acknowledgment of Service attached.

[Endorsed]: Filed June 16, 1953.

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In the District Court for the District of Alaska  
 Third Division

No. A-6011

JEWEL HAWKINS, Plaintiff,

vs.

LAWRENCE SAVAGE, doing business as Lee  
 Savage Painting Company,  
 Defendant.

TRANSCRIPT OF PROCEEDINGS

Anchorage, Alaska, September 17, 1952

Before Honorable Anthony J. Dimond, United  
 States District Judge.

Mr. Bailey E. Bell, Attorney for Plaintiff.

Mr. Thomas R. Winter, Attorney for Intervenor.

Mary Keeney, Court Reporter. [1\*]

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

On Wednesday, September 17, 1952, the above-entitled matter came on regularly for trial in open court at Anchorage, Alaska, before The Honorable Anthony J. Dimond, United States District Judge.

The plaintiff was represented by Bailey E. Bell, Attorney-at-Law.

The Intervenor was represented by Thomas R. Winter, Attorney-at-Law.

At that time the following proceedings were had:

Court: This is the time set for trial of cause No. A-6011, Jewel Hawkins, Plaintiff, vs. Lawrence Savage, d/b/a Savage Painting Company, Defendant, United States of America, Intervenor. I have read all of the papers in the case and I will be pleased to have counsel make opening statements.

Mr. Bell: Your Honor, mine will be very brief. My complaint [3] practically states all of my contention. The plaintiff, Jewel Hawkins, is the owner of a large number of checks that were cashed with her and which were turned down, NSF, at the Bank. These are payroll checks, labor checks, and dated, all of them, in 1949, and most of them in August of 1949, and the one for \$2,000.00, that was endorsed and cashed at the Northern Commercial Company, was paid by Jewel Hawkins and signed to her, because she had endorsed, and I have set them out in separate causes of action for the convenience of the Court, and that the objections might be made to them separately. My contention is this, and the argument will base on this—the action was filed—you have the date there before you—

Court: February 27, 1950, apparently.

Mr. Bell: Yes; February 22, 1950.

Court: 27th.

Mr. Bell: 27th, and attachment was issued and served on J. B. Warrack & Company, and J. B. Warrack & Company answered back, holding certain sums sufficient to satisfy invoice due the defendant, and did not state as to the remainder of funds they had in their possession, and which I understand have later been paid to the Savage Company, or to the persons entitled to claim it, by this company. The evidence will show in this case that at a later date there was a motion and application to intervene by the United States Government, which was opposed by me but Your Honor permitted them to intervene and the intervening [4] petition was filed. In that it was claimed they had a prior lien on those garnisheed funds, or attached funds, and we answered that they did not have a prior lien, that we had the prior lien since it was personal property and not real estate, and that the filing of the Notice Lien was not sufficient. That question will probably be one of the questions that will come up before you. Now, I understand that Mr. Winter tells me he's got an exact copy of the one that was filed before Rose Walsh, and if Mr. Winter tells us that is an exact copy, I will take his word for it—I won't require to have him certify it. My position will be all the way through that my lien is prior. Now, I understand the record will show, and I didn't check it, but you signed the Order of Default for the Government and for me, is that right?



Court: I think only against the Lawrence Savage Company; the defendant was declared in default—that is my recollection of it.

Mr. Bell: I think we both had about the same——

Court: The Government moved for default against the plaintiff because the plaintiff failed to respond to the complaint in intervention, but that motion was denied and the plaintiff thereafter filed an answer to the complaint in intervention, and there is an order of default which was signed on June 6th on behalf of the plaintiff against the defendant Lawrence Savage. Lawrence Savage was served and did not appear, and the default [5] was entered against Lawrence Savage.

Mr. Bell: Now, I take it there has been nothing done by the Court to establish priority between we people in any way?

Mr. Winter: That's right.

Court: No, nothing has been done by the Court as to the relative priority.

Mr. Bell: That's right, and that will possibly be the big tussle here.

Court: Counsel said something as to the claims being embraced in the complaint being payroll claims for labor performed.

Mr. Bell: The checks show that, Your Honor.

Court: What about the \$2,000.00 item; is that a payroll claim?

Mr. Bell: Let me see, Your Honor.

Mr. Winter: It was a check for a gambling loss, wasn't it?

Mr. Bell: No, there wasn't anything of it that could be insinuating that.

Mr. Winter: Of course, I don't think that makes any difference, Your Honor.

Mr. Bell: That's not it at all, and we had Mrs. Hawkins here to testify and she went way off in the Arctic to operate a roadhouse where the Government is building an airfield, and I, of course, couldn't get her for this.

Court: Is she in the city now?

Mr. Bell: No; I told her since Mr. Cooper and I talked [6] this over, our contention has been over priorities.

Mr. Winter: Was there a \$2,000.00 check there—that's the only one I was thinking of that was for a gambling loss.

Mr. Bell: There is no pleading to that effect. It's a check—just a payroll check like the rest of them. The Northern Commercial Company cashed it for Mrs. Hawkins and she had to pay it, so we allege in the complaint that she verified. She cashed it and needed money so she went to the Northern Commercial Company and they cashed it for her and I believe put it through, and she had to redeem it when it came back, and she paid it out, and there is no contention anywhere in the pleadings of either party that there was any gambling debt. They were painting the bridge at Nenana and there was no bank there and the plaintiff was running a roadhouse there at Nenana, and a bar, and they were acting as a bank in that vicinity there, and these checks were cashed there and they have the names.

of the individuals who they were issued to on the check and endorsed by that particular individual. My client's contention is that the \$2,000.00 check was an accumulation of some checks there and some money that the foreman wanted to pay the men on the job, and he came there and issued a \$2,000.00 check to her and she cashed it for him—that was Lawrence Savage himself—and she cashed it for him and he used cash to pay the men there at her place that evening. That question isn't raised, but since he mentioned gambling, I thought we better clear that up in your [7] mind, because we don't want to go in with any strikes against us.

Mr. Winter: Have you had default judgment entered against Savage?

Mr. Bell: Yes.

Mr. Winter: I take it default judgment has been entered against Savage.

Court: It may be entered. The checks ought to be entered in evidence.

Mr. Winter: If the Court please, this case involves a very simple question of law, in my opinion. Lawrence Savage, the defendant, became indebted to the United States for withholding and Social Security taxes, Federal Insurance Contribution Taxes, for the quarter ended 9/30/49—that is, September 30, 1949, for taxes which exceed, now exceed \$3,381.26; that is the basic amount that is due, without interest, on those taxes. In other words, Mr. Savage incurred tax liability to that extent prior to September 30, 1949. On December 27, 1949, the assessment list was received by the Collector

of Internal Revenue; in other words, it is our position that on December 27, 1949, the United States, under Section 3670, which so provides, acquired a lien against all of the property of Lawrence J. Savage; that is what the statute provides, that the United States shall have lien against property after the assessment list is received—after Notice and demand for the payment of the taxes. Notices of Tax Liens covering the assessment of the taxes were filed with [8] the United States Commissioner on June 28, 1950, and the 13th day of June, 1950, and I have copies of those Notices of Tax Liens. Now, if Your Honor will get those dates. In other words, assessment list was received on December 27, 1949, and Notice of Tax Lien was filed, the first one on June 13th—we will just use the second date—June 28, 1950.

Court: The United States Commissioner at Valdez, is that right?

Mr. Winter: At Anchorage. On February 27, 1950, after we had a lien against the taxpayer Savage, and all of his property and rights to property, the plaintiff, Mrs. Jewel Hawkins, brings this suit. On April 19, 1950, after we had our lien, they filed an attachment against J. B. Warrack Company. J. B. Warrack Company owes Savage \$3,284.86. Now, that's what we are fighting here over. The amount that J. B. Warrack has belonging to Savage is \$3,284.86. Now, we have levied against that fund in the hands of Warrack, and the plaintiff has attached it. Now the plaintiff does not have a judgment as of yet. We filed our Notice of Tax

Liens in June of 1950, but here it is 1952 and they don't have a judgment yet. In other words, they haven't perfected their judgment lien even yet, and it is our position, and there is a decision of the Supreme Court of the United States which is even stronger—in that case we hadn't received our assessment list prior to the time they attached the property attachment on the bank account. [9]

Court: Let's stick to the facts, now.

Mr. Winter: I'm showing there is a difference. The question is—it is our position that the United States, having acquired its tax lien by having received the Assessment List and having filed Notice of Tax Lien prior to the time plaintiff obtained a judgment, and our assessment even preceding the time they even attached, that we have a prior lien to the attachment lien, and there are no cases to the contrary, so far as I know, in decisions on that question of law.

Mr. Bell: Your Honor, at this time I would like to offer in evidence all of the checks, and ask that they be marked as one exhibit for the convenience of the Court.

Court: They may be admitted and marked Plaintiff's Exhibit 1.

Mr. Bell: And we ask judgment on the checks as against Savage, and Your Honor, I could——

Court: Default judgment may be entered.

Mr. Winter: We will offer, if the Court please—I have copies of Notices of Tax Liens showing dates on the back, which were filed with the United States Commissioner at Anchorage, June 28, 1950, at 3:00

p.m., with Rose Walsh, and on June 13, 1950, at 11:00 a.m., with Rose Walsh.

Mr. Bell: We do not object to them on the theory that they are not certified; we have implicit confidence in counsel; he states they are copies. I do object to them on the grounds they [10] are not sufficient to create any lien of any kind; they are not verified or sworn to as by law required, and not filed in the proper place, is two reasons why I object to them, and the third reason is that no proceedings were based upon them afterwards, therefore the liens would not be admissible.

Court: In order to dispose of the trial now, it is necessary not to inquire into the verification of points of law made by counsel in his objections. Therefore, the objections will be overruled and the papers will be admitted in evidence without ruling upon the questions of law involved.

Mr. Bell: All right.

Mr. Winter: We would also like to offer in evidence a certified copy—it is Form 899—it is a certified copy by the Collector of Internal Revenue of the official records in his office and it is admissible under the Rules and under the United States Code, without any further evidence whatsoever, being a certified copy of official Government records in the possession of an official in the Executive Branch of the Government.

Mr. Bell: I object on the grounds that a certified copy is insufficient within the law and within the statute, and that it is not admissible in an action of this kind.

Court: The objection is overruled without passing finally upon the questions of law involved. It may be admitted in evidence, marked Intervenor's Exhibit C, and the others will be A and B. [11]

Clerk: They are attached, Your Honor; I have marked them as one.

Court: Does counsel for the United States wish the first two papers to go in as one exhibit?

Mr. Winter: I think they might as well, Your Honor.

Court: Very well; Exhibit A, then, and the certified copy from the Collector of Internal Revenue is Exhibit B.

Mr. Winter: Your Honor, I thought I had a copy of our Notices of Levies served on J. B. War-rack Company, but I have asked Mr. Collar to get it, and with the exception of having Mr. Collar testify that he served Notice of Lien in accordance with 3671, that will be all of our testimony.

Mr. Bell: I want to introduce as part of my case in chief, the attachment affidavit and the attachment undertaking, and the writ of attachment and the return, and make them a part of my case in chief.

Mr. Winter: We have no objection.

Court: They may be admitted; I think they are all in the file except the undertaking—that is kept in a special file in the Clerk's office. I don't know whether it is necessary, but we will include that, too, in the papers introduced.

Mr. Winter: I might state to the Court that all I want to show is that Notice of Levy was served

on J. B. Warrack Construction Company \* \* \* have they answered your attachment?

Mr. Bell: Oh, yes. [12]

Mr. Winter: And they are holding \$3,284.86 under the Levy served by the United States, and also under the attachment, and that is the question for the Court to determine. It is our position that the Levy by the United States does not affect one way or the other the priority rights of the United States, although they are our means of enforcing our lien, and the Courts have so held.

Court: Against Warrack?

Mr. Winter: That's right, Your Honor. Now, I am ready to argue, and we will just put that evidence in; he will be right back. I have a typewritten copy of the case which we rely upon entirely, and I would like to hand it to the Court. The Supreme Court of the United States; I think this case is determinate of the issue without any further authority.

Court: All of the papers concerning the attachment, and returns to the attachment, are admitted in evidence. They may go in as one exhibit.

Mr. Winter: If the Court please, I have three documents, three Levies on Form 668A—they are the official records of the Collector of Internal Revenue, or notice of levies, which were served on J. B. Warrack Company on June 12, 1950, at 2:50 o'clock a.m., as shown by the receipt of Warrack; on June 30, 1950, at 3:50 o'clock a.m., and April 20, 1952, at 8:21 o'clock a.m., served on Ellie Scott for J. B. Warrack Company. I would like to in-



roduce these original documents and substitute copies, because they are official records of the Collector of Internal Revenue, and we would like to substitute typed copies.

Mr. Bell: Your Honor, I am not objecting to him having the right to introduce, that is, to substitute copies on account of them being his record, I have no objection on that ground, but I do object to the introduction of them for the reason they are incompetent, irrelevant and immaterial and not sufficient for creating any lien—that the notices are not sufficient to create a lien as of themselves. I am not objecting to the fact they are not properly identified. I admit, for the sake of the record, that they are the original, of which copies must have been served on J. B. Warrack Company, because they are certified that they were served by Mr. Klein, and I am sure he wouldn't have said they were unless they were, but I do object to their introduction for the reason they are insufficient under the laws.

Mr. Winter: If the Court please, we do not contend that they in any way add to our lien; in other words, our levy is our usual procedure, which is only our means of enforcing our already existing lien. It is merely to show that we attempted to collect from J. B. Warrack Company, and that is the reason we have intervened in this case, is because of the attachment. We have to have this Court release this attachment because we have prior lien upon the property. Our lien is already perfected by filing of the Notice, but I think it is relevant to show the true picture to the Court and I don't

think it can hurt counsel's [14] position one way or the other.

Court: Yes; I think it does not affect the position of the plaintiff, and the objection will be overruled and the papers admitted. Do you wish to have them go in as one exhibit?

Mr. Bell: Object to their going in as one exhibit, because my objections will go to each exhibit.

Court: All right; Exhibits D, E, and F.

Mr. Bell: And may my objection go to each one?

Court: Oh, yes; I am not passing upon the question of law. I want all the papers before me.

Mr. Winter: May we substitute certified copies?

Court: Oh, yes; the Collector may furnish the forms to the Clerk and also type on "Certified by the Clerk that this is a certified copy". I suppose that completes the evidence.

Mr. Winter: That is the Government's case.

Court: Counsel for Intervenor said, "a very simple question of law." It may be simple to counsel, but it is not so simple for the Court. I would be glad to hear what counsel have to say; if counsel want to prepare written briefs——

Mr. Bell: I was going to suggest that, and I am sure Mr. Winter has the situation in hand.

Mr. Winter: I have already filed mine. If you can show me a case that overrules the Supreme Court of the United States——

Mr. Bell: I will show you that's real estate——

Court: Counsel has the citation? [15]

Mr. Bell: I know what case; I suppose it's 340 U.S. at 47——

Mr. Winter: It's United States vs. Security Trust and Savings Bank of San Diego; it involves attachment against personal property in the Bank of San Diego; it doesn't involve real estate at all.

Mr. Bell: Is that 340 U.S., at 47?

Mr. Winter: That's right. Your Honor can put that citation on the top of it. That involved an attachment against a bank account in the Security Trust and Savings Bank in San Diego by an attaching creditor, such as here.

Mr. Bell: I may be mistaken, then; I'm sure Mr. Winter wouldn't misstate a fact, but Your Honor, there is a very important case, and I thought that's the one he was citing, on real estate, where the lien was filed on real estate and the real estate was later sold to an innocent person who did not have notice of the filing of the lien, and the Courts held that filing of the lien was notice. That is a strong case. I can't remember the citation. Would Your Honor indicate how much time I could have to file my brief?

Court: Anything within reason, counselor.

Mr. Bell: Would 15 days be all right?

Court: 15 days will be all right, and Mr. Winter may have 10 days after service of the brief to file his answer, if he wishes.

Mr. Winter: I wonder if I might have 15 days, because of [16] the uncertainty of the mails.

Court: 15 days, then.

Mr. Winter: Your Honor, I would like to have Your Honor refer to one other Ninth Circuit Court of Appeals decision, if Your Honor will write on

that; that is, MacKenzie vs. United States, at 109 Federal, 2nd, page 540; that is a Ninth Circuit Court of Appeals decision.

Court: Have you any other cases to cite?

Mr. Winter: Well, the Supreme Court decision is so analogous because it involved exactly the same situation—an attachment on a bank account, or a debt. The MacKenzie case, Your Honor, is a case involving also a question of whether or not the lien of the United States attached to intangibles such as debt or bank account, such as we have here. That was the first case they decided that the lien of the United States did attach to intangibles, then the Supreme Court came along in the Taft case and says not only does a lien of the United States attach to intangibles, but it attaches to after acquired property.

Court: May I have the Taft citation?

Mr. Winter: Yes; United States vs. Taft, 44 Federal Supplement at 565, which was affirmed by the Circuit Court of Appeals of the Ninth Circuit in 135 Federal, 2nd, at 527, but the case I have in mind is the Glass City Bank of Jeanette vs. The United States, in 326 U.S. 265.

Court: Very well; I have Taft, Glass City Bank, MacKenzie, [17] and a copy of the opinion in the Security Trust case.

Mr. Winter: I think those cases—I mean, the reason why I am giving Your Honor those other cases is because they go into—in the Long Island case, it was thought that the United States lien didn't attach to intangibles because of some dicta

in the Long Island Acts, but the United States Supreme Court came along and said that it attaches to a bank account, and the Supreme Court in the Taft and Glass City Bank cases came along and said not only does it attach to intangibles, but after notice of tax lien is filed, reaches out and attaches to any property taxpayer might acquire in the future. Our lien attaches not only to the property, but rights to property. This case is just like the Supreme Court decision exactly, except our assessment list had been received prior to the time of the attachment. We have a lien prior to their attachment by reason of receiving their assessment list. They were not a judgment creditor until Your Honor ordered the judgment today.

Court: My opinion is, offhand—I would be glad to hear counsel upon that—but the attachment is used the same in legal effect as the judgment.

Mr. Winter: The Supreme Court of the United States says the doctrine of relation back does not apply to the lien of the United States, the express words of the United States Supreme Court. The Supreme Court says that until the judgment creditor gets a judgment he has nothing more than an inchoate lien. If [18] Your Honor will read that decision—there is no authority to the contrary.

Court: I will read them, of course.

Mr. Bell: Your Honor, I don't care to argue—

Mr. Winter: But, Your Honor, even if Your Honor is correct, if it is the same as a judgment, they didn't get their judgment until April. We ac-

quired our lien by receiving the assessment list in December.

Court: That is reasonable, but to say that a judgment is of no more effect than counsel would indicate, is rather surprising. I would be glad to have counsel refer to that in his brief, and I will have that in writing before me.

Mr. Winter: There is only a short opinion there; I thought I had it. May I see that typewritten copy, Your Honor?

Court: Yes.

Mr. Winter: The Supreme Court says this, "The attachment lien gives the attachment creditor no right to proceed against the property unless he gets a judgment within three years, or within such extension as the statute provides. Numerous contingencies might arise which would prevent the attachment lien from ever becoming perfected by a judgment awarded and recorded. Thus the attachment lien is contingent or inchoate—merely a *lis pendens* notice that a right to perfect a lien exists. Nor can the doctrine of relation back—which by process of judicial reasoning merges the attachment lien in the judgment and relates [19] the judgment lien back to the date of attachment—operate to destroy the realities of the situation." In other words, it was after the attachment—which we did here—Morrison did not have a judgment lien; in other words, when our notice of tax liens were filed, Hawkins did not have a judgment lien. Under Section 3466, "It has never been held sufficient to defeat the federal priority merely to show

a lien effective to protect the lienor against others than the Government, but contingent upon taking subsequent steps for enforcing it. *Illinois vs. Campbell, Supra, 374*. If the purpose of the federal tax lien statute to insure prompt and certain collection of taxes due the United States from tax delinquents is to be fulfilled, a similar rule must prevail here. Accordingly, we hold that the tax liens of the United States are superior to the inchoate attachment lien of Morrison, and the judgment of the District Court of Appeal for the Fourth Appellate District is reversed." In other words, although the judgment reverts back to the date of the judgment, if our lien is carried in the interim before a judgment, we have priority. Exactly the same situation we have here, except in that case we didn't then have the assessments before the attachment.

Court: I will be glad to have counsel devote some attention to that point.

Mr. Bell: Your Honor, California has a peculiar attachment statute and the Supreme Court of California, prior to the United States passing on this case, had construed that attachment differently from all other States; I will cite that in my brief. That case is a different situation from this one. I will get that to you as soon as I can.

Court: Counsel may do it at his own convenience, within the time prescribed.

Thereupon, at 11:50 o'clock a.m., September 17, 1952, trial of the above-entitled cause was concluded.

[Endorsed]: Filed May 25, 1953.

[Title of District Court and Cause.]

### ORDER

On the ex-parte application of Intervenor, United States of America, the Court being fully advised, it is

Ordered that the time for filing the record on appeal with the United States Court of Appeals for the Ninth Circuit and for docketing therein the appeal taken by intervenor by notice of appeal filed on the 14th day of April, 1953, is extended to July 12, 1953, pursuant to Rule 73(g) of the Federal Rules of Civil Procedure.

Done at Anchorage, Alaska, this 16th day of June, 1953.

/s/ GEORGE W. FOLTA,  
United States District Judge.

[Endorsed]: Filed June 16, 1953.

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[Title of District Court and Cause.]

### ORDER

On the sub-joined consent of Bailey E. Bell, Esquire, of attorneys for plaintiff Jewel Hawkins, and upon motion of Arthur D. Talbot, Assistant United States Attorney, attorney for intervenor United States of America, it is hereby

Ordered that the Clerk of the Court submit to the Clerk of the Circuit Court of Appeals for the



Ninth Circuit, the original papers and exhibits herein, in lieu of copies thereof.

Done at Anchorage, Alaska, this 18th day of June, 1953.

/s/ GEORGE W. FOLTA,  
District Judge.

I hereby consent to the entry of the foregoing Order without further notice.

/s/ BAILEY E. BELL,  
Attorney for plaintiff Jewel Hawkins.

[Endorsed]: Filed June 18, 1953.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, M. E. S. Brunelle, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75(g) (o) of the Federal Rules of Civil Procedure and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, and including specifically the complete record and file of such action, including the bill of exceptions setting forth all the testimony taken at the trial of the cause and all of the exhibits introduced by the respective parties, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled cause by the above-entitled Court on April 8, 1953, to the United States Court of Appeals at San Francisco, California.

[Seal]           /s/ M. E. S. BRUNELLE,  
Clerk of the District Court for the Territory of  
Alaska, Third Division.

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[Endorsed]: No. 13887. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Jewel Hawkins, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed: June 24, 1953.

                  /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13887

UNITED STATES OF AMERICA,

Appellant,

vs.

JEWEL HAWKINS,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANT INTENDS TO RELY  
ON APPEAL

1. The Court erred in concluding that since the plaintiff, as against third persons, is deemed to be a purchaser according to Article 4, Section 55-6-67, Alaska Compiled Laws Annotated, she is also a purchaser within the meaning of Section 3672, Internal Revenue Code.

2. The Court erred in concluding that the Alaska Statute is controlling in determining the definition of persons protected by the Federal Laws pertaining to the priority of tax liens.

3. The Court erred in concluding that the plaintiff's attachment lien secured prior to judgment has priority over tax liens of the United States recorded subsequent to the plaintiff's attachment but prior to judgment.

4. The Court erred in entering judgment for the plaintiff and ordering that the plaintiff's at-

tachment should be sustained and that her judgment should be satisfied out of the attached fund, free and clear of all liens of the United States.

/s/ SEABORN J. BUCKALEW,  
United States Attorney.

/s/ ARTHUR D. TALBOT,  
Assistant U. S. Attorney,  
Attorneys for Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed July 1, 1953. Paul P. O'Brien,  
Clerk.